Decision No. R16-0025

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 15C-0119EC

---

IN THE MATTER OF ALLEGED VIOLATIONS OF COLORADO REVISED STATUTES AND COMMISSION RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE BY RESPONDENT HUMMERSOFVAIL INC., DOING BUSINESS AS VAILTAXISERVICE &/OR ECOLIMOOFVAIL &/OR VAILLUXURYLIMO &/OR VANSTOVAILVALLEY.

---

**RECOMMENDED DECISION OF ADMINISTRATIVE LAW JUDGE MANA L. JENNINGS-FADER PERMANENTLY REVOKING PERMIT NO. LL-01417 FOR CAUSE, PROHIBITING RESPONDENT AND RELATED PERSONS FROM OBTAINING A LUXURY LIMOUSINE PERMIT FOR A PERIOD OF TWO YEARS, AND ORDERING COMPLIANCE FILING**

---

Mailed Date: January 13, 2016

**TABLE OF CONTENTS**

## I. STATEMENT

1. On February 26, 2015, by Decision No. C15-0189, the Commission issued (in one document) a Formal Complaint and Order to File Answer or Other Response (Complaint).[1] The Complaint names HummersofVail Inc., doing business as VailTaxiService and/or ECOLimoOfVail and/or VailLuxuryLimo and/or VansToVailValley (HummersofVail or Respondent), as the Respondent. The Complaint commenced this Proceeding.

2. In Decision No. C15-0189, the Commission referred this Proceeding to an Administrative Law Judge (ALJ).

3. On March 5, 2015, counsel for Trial Staff of the Commission (Staff) entered an appearance in this matter. In that filing and pursuant to Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1007(a),[2] Staff identified the trial Staff and the advisory Staff in this Proceeding. On May 13, 2015, Staff filed a Notice of Substitution of Advisory Staff.

4. The Parties in this Proceeding are Staff and Respondent; each individually is a Party. Each Party is represented by legal counsel in this matter.

5. On March 27, 2015, by Decision No. R15-0291-I, the ALJ scheduled a May 2015 evidentiary hearing in this matter. On motion, the ALJ vacated that hearing date.

6. On May 18, 2015, HummersofVail filed its Answer to the Complaint. That filing put this Proceeding at issue.

7. On June 10, 2015, by Decision No. R15-0521-I, the ALJ established the procedural schedule, and scheduled a September 2015 evidentiary hearing, in this matter. On motion, the ALJ vacated that hearing date.

[1] Decision No. C15-0189 (including its Attachment A) is Hearing Exhibit No. 15.

[2] That Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

8. On September 4, 2015, Staff filed its Disclosure of Witnesses and Exhibits.

9. On September 8, 2015, Respondent filed its Disclosure of Witnesses and Exhibits.

10. On September 8, 2015, by Decision No. R15-0977-I, the ALJ scheduled an October 14, 2015 evidentiary hearing and modified the procedural schedule in this Proceeding.

11. On the scheduled date, the ALJ called this matter for hearing. The Parties were present, were represented, and were prepared to proceed.

12. At the hearing, the ALJ heard the testimony of two witnesses.[3] Hearing Exhibits No. 1 thorough No. 21 were marked, offered, and admitted into evidence without objection. In this Proceeding, there is no information that is claimed to be confidential.

13. At the conclusion of the hearing, the evidentiary record was closed. The ALJ took the matter under advisement.

14. On October 30, 2015, Staff filed a Closing Argument and Statement of Position (Staff SOP).

15. On October 30, 2015, Respondent filed a Closing Argument (Respondent SOP).

16. No response to the October 30, 2015 filings was permitted.

17. In accordance with, and pursuant to, § 40-6-109, C.R.S., the ALJ transmits to the Commission the record of this Proceeding together with a written recommended decision.

## II. FINDINGS OF FACT

18. Except as noted, the facts are not disputed.

19. Additional findings of fact are found throughout this Decision.

[3] The transcript of the evidentiary hearing was filed in this Proceeding. In this Decision, the transcript is cited as Tr., and the page and line are cited as page:line. Thus, citation to the transcript at page 50, lines 1 through 10 is: Tr. at 50:1-10.

**A. The Parties.**

20. Staff is litigation Staff as identified in the Rule 4 CCR 723-1-1007(a) notice filed in this Proceeding.

21. HummersofVail is a corporation that conducts business as HummersofVail and under the trade names VailTaxiService, ECOLimoOfVail, VailLuxuryLimo, and VansToVailValley. In prior Commission Proceedings, Respondent's

> name has been imprecisely stated. Pursuant to records maintained by the Colorado Secretary of State, the name of the company that operates under [Permit No. LL-01417] is "HummersofVail Inc.," and it operates under the trade names: "VailTaxiService," "ECOLimoOfVail," "VailLuxuryLimo," and "VansToVailValley." Further, these are the spellings of the business and trade names as they appear in the Commission's records. Although the names previously used were probably sufficiently distinct so as to avoid confusion with any other entity, the properly spelled business name and trade names have been used in

the Complaint. Decision No. C15-0189 (Hearing Exhibit No. 15) at note 1.

22. Respondent is, and has been at all times pertinent to this Proceeding, a motor carrier as defined in § 40-10.1-101(10), C.R.S., and Rule 4 CCR 723-6-6001(v).[4]

23. Respondent holds Commission-issued authority Permit No. LL-01417.[5]

24. Permit No. LL-01417 (Hearing Exhibit No. 1) authorizes Respondent to provide luxury limousine service, as defined in § 40-10.1-301(8), C.R.S., and Rule 4 CCR 723-6-6301(e).

[4] This Rule is found in the Rules Regulating Transportation by Motor Carrier, Part 6 of 4 *Code of Colorado Regulations* 723.

[5] As defined in § 40-10.1-101(14), C.R.S., the term "permit" includes an authority issued to a motor carrier under part 3 of article 10.1 of title 40, C.R.S. Part 3 includes authority to operate luxury limousine service. Permit No. LL-01417 is Hearing Exhibit No. 1.

25. Permit No. LL-01417 is, and at all times relevant to this Proceeding has been, Respondent's sole authority for the transportation of passengers in intrastate commerce in Colorado. This is the only type of transportation authority or permit that Respondent has held.

**B. The Witnesses.**

26. Staff presented the testimony of William Schlitter.[6] Staff witness Schlitter is employed, and has been employed since 2010, as a Criminal Investigator in the Investigations and Compliance Unit of the Commission's Transportation Section. In the course of his assigned duties, and consistent with his responsibilities, as a Criminal Investigator, Staff witness Schlitter: (a) conducted the investigation of HummersofVail that led to the issuance of the Complaint (Hearing Exhibit No. 15); and (b) executed the Affidavit in Support of Proposed Formal Complaint (Schlitter Affidavit) that is Attachment A to the Complaint.

27. Respondent presented the testimony of Jonathan L. Levine.[7] Respondent witness Levine is, and during all times pertinent to this Proceeding has been, Respondent's owner and designated agent.

**C. Relevant Prior Proceedings.**

28. As pertinent to the instant Proceeding, Decision No. R13-0030[8] states at ¶¶ 30-31, 44-45, 65-66, 74-75:

> At all times relevant to [Proceeding No. 12G-987EC], [Staff witness] Hinson was employed in the Commission's transportation section. At present, Mr. Hinson is manager of the investigations and compliance unit in the Commission's transportation section; he has held this position since August 2012.

[6] Staff witness Schlitter's testimony is found in Tr. at 12:1-83:3.

[7] Respondent witness Levine's testimony is found in Tr. at 83:17-90:5.

[8] Decision No. R13-0030 was issued on January 8, 2013 in Proceeding No. 12G-987EC, *Colorado Public Utilities Commission v. Hummers of Vail, Inc., Doing Business as Vail Taxi Service, Eco Limo of Vail, Vail Luxury Limo, Vans to Vail Valley*. By operation of law, Decision No. R13-0030 became a Commission Decision on January 28, 2013. Decision No. R13-0030 is Hearing Exhibit No. 3.

For approximately three and one-half years) prior to that time, Mr. Hinson was a criminal investigator in the Commission's transportation section.

Pursuant to their duties and responsibilities in the transportation section, [Staff witnesses] Cummings and Hinson conducted the August 2012 investigation that resulted in issuance of the CPAN [in Proceeding No. 12G-987EC]. In addition, pursuant to his duties and responsibilities in the transportation section, Mr. Hinson had direct contact with Respondent on a number of occasions before August 2012.

* * *

On March 27, 2012, [Staff witness] Hinson arranged and held a meeting with Respondent's owner Jonathan L. Levine, the chief of the Vail Police Department, and two drivers for Respondent. The meeting lasted for approximately one and one-half hours, during which time they discussed in detail the rules governing luxury limousine service and other pertinent Commission rules; Respondent's operation as a luxury limousine service; and how Respondent could come into compliance with the rules governing luxury limousine service.

On June 12, 2012, by Decision No. R12-0636,[Note 11] the ALJ approved a Stipulation and Settlement Agreement between Staff and Respondent (Stipulation).[Note 12] In the Stipulation Respondent admitted, and the ALJ found, that on four occasions in February 2012 Respondent violated Rule 4 CCR 723-6-6310(a).[Note 13] In the Stipulation, Staff and Respondent agreed to stipulated facts, including the following:

> b. The Respondent has implemented a new training policy and is stipulating to the fact that *he has provided training* on the applicable PUC rules and regulations concerning luxury limousine service and that *he will strictly enforce these rules and regulations.*
>
> c. Respondent has implemented new policies and new procedures to prevent any of the limousines owned and/or operated by him or for him as operator and owner of Hummers of Vail, Inc., doing business as Vail Taxi Service, Eco Limo of Vail, Vail Luxury Limo and Vans to Vail Valley to be at or near the point of departure in the future without having charter orders.

Decision No. R12-0636 at Attachment 1 at 3 (emphasis supplied).

* * *

... [In determining that Respondent should be assessed the maximum civil penalty in Proceeding No. 12G-987EC, the] ALJ considered Staff's efforts to assist Respondent to come into compliance, and Respondent's unwillingness to come into compliance. The ALJ considered that, in June 2012, Respondent (a) signed the Stipulation, quoted above, and admitted numerous violations of Rule 4 CCR 723-6-6309(a); (b) stated that its drivers had received training

concerning the rules governing luxury limousine service; and (c) stated that it had implemented new procedures and policies to prevent future violations.

The ALJ then examined whether Respondent had made any good faith efforts to attempt to achieve compliance and to prevent future similar violations (Rule 4 CCR 723-1-1302(b)(V)). In the June 2012 Stipulation, Respondent promised that it would strictly enforce the luxury limousine service regulations. Yet, in August 2012, Respondent violated Rule 4 CCR 723-6-6309(a) again. Based on the record, Respondent's statements and promises of future conduct made in the Stipulation appear not to have been made in good faith. In addition, Respondent's violations of Rule 4 CCR 723-6-6309(a) date back to January 2007 and continue unabated. This negates any suggestion that Respondent made a good faith effort to come into compliance and to prevent future violations.

* * *

The ALJ finds that a cease and desist order should issue against Respondent in [Proceeding No. 12G-987EC] because: (a) Respondent has long-standing actual knowledge that it cannot provide transportation service other than luxury limousine service; ... (e) Respondent's distain for abiding by applicable statutes and Commission rules was manifested by its signing in June 2012, and then immediately disregarding, the Stipulation discussed above; (f) Respondent's distain for abiding by applicable Commission rules continued to the day of the hearing and was manifested by its failure to make any filing in [Proceeding No. 12G-987EC] and its failure to appear for the evidentiary hearing; ... .

In addition, the ALJ finds that a cease and desist order is warranted as Respondent's providing unauthorized transportation service harms the traveling public and the general public's health and safety because Respondent is operating as a *de facto* common carrier. Common carrier authority is comparatively difficult to obtain, requires proof that the proposed service is in the public interest, and is subject to detailed regulatory controls on the geographic scope and mode of operation of the service. A luxury limousine permit, on the other hand, is available over the counter for a relatively small fee (*see* § 40-10.1-302(2), C.R.S. (requirements for issuance of permit)); allows the motor carrier to provide transportation throughout the state; and carries with it only very limited regulatory oversight by the Commission. The ALJ finds that it is important to maintain the distinction between luxury limousine service and common carriage and that issuing a cease and desist order against Respondent will help to maintain that distinction.

Note 11 states: Decision No. R12-0636 is Hearing Exhibit No. 7 [in Proceeding No. 12G-987EC]. That Recommended Decision became a Decision of the Commission on July 2, 2012 and was issued in consolidated [Proceedings] No. 12G-345EC, No. 12G-346EC, No. 12G-347EC, No. 12G-348EC, and No. 12G-349EC, each captioned *Public Utilities Commission v. Hummers of Vail,*

*Inc., doing business as Vail Taxi Service, ECO Limo of Vail, Vail Luxury Limo, Vans to Vail Valley*.

Note 12 states: The Stipulation and Settlement Agreement is Attachment 1 to Decision No. R12-0636.

Note 13 states: After Decision No. R12-0636 was issued, the Commission amended the transportation rules. Rule 4 CCR 723-6-6310 became Rule 4 CCR 723-6-6309. The substance of the rule did not change.

29. The cease and desist order in Decision No. R13-0030 (Hearing Exhibit No. 3) remains in effect.

30. As pertinent to the instant Proceeding, Decision No. R12-1482[9] states at ¶¶ 38, 50-52, 57-58, 63-65, and Ordering Paragraphs No. 3 and No. 4:

> Continuously since at least 2005 [until the December 14, 2012 hearing in Proceeding No. 12F-1087CP], Respondent has advertised and otherwise held itself out to the public as a transportation carrier that provides taxi service in the Vail Valley for compensation.
>
> * * *
>
> Hummers of Vail holds Permit LL-01417 and no other Commission-issued authority. Hummers of Vail is authorized to provide only one type of transportation in Colorado: luxury limousine service.
>
> Section 40-10.1-104, C.R.S.,[Note 7] provides: "A person shall not operate or offer to operate as a motor carrier in this state except in accordance with this article."
>
> Section 40-10.1-301(9), C.R.S., defines luxury limousine service as "a specialized, luxurious transportation service provided on a prearranged, charter basis. 'Luxury limousine service' does not include taxicab service or any service provided between fixed points over regular routes at regular intervals." *See also* Rule 4 *Code of Colorado Regulations* (CCR) 723-6-6001(ee) [2012] (same).[Note 8]
>
> * * *
>
> Taxi service is common carriage; and, pursuant to § 40-10.1-201(1), C.R.S., a motor carrier must obtain from the Commission a CPCN [Certificate of Public Convenience and Necessity] to provide common carriage transportation.

[9] Decision No. R12-1482 was issued on December 31, 2012 in Proceeding No. 12F-1087CP, *High Mountain Taxi, Doing Business as Hy-Mountain Transportation, Inc. v. Hummers of Vail, Inc., Eco Limo of Vail, Vail Taxi Service, Vail Luxury Limo, Vans to Vail Valley*. By operation of law, Decision No. R12-1482 became a Commission Decision on January 20, 2013. Decision No. R12-1482 is Hearing Exhibit No. 4.

In addition, to provide taxi service, a motor carrier must obtain from the Commission a CPCN specifically authorizing service by taxicab. *See, e.g.*, Rule 4 CCR 723-6-6251(g) (definition of taxicab carrier).

Respondent holds no Commission-issued CPCN specifically authorizing service by taxicab. The evidence in [Proceeding No. 12F-1087CP] establishes that, continuously since at least 2005, Respondent has advertised its ability and willingness to provide, and otherwise has offered to provide, taxi service to the public. The evidence establishes a pattern of Respondent's violating § 40-10.1-104, C.R.S., by offering to provide a transportation service not in accordance with article 10.1 of title 40, C.R.S., when Respondent offered to provide general common carriage transportation without authority and when Respondent offered to provide service by taxicab without authority.

* * *

... The ALJ finds that a cease and desist order should issue in [Proceeding No. 12F-1087CP] because: (a) for a considerable period of time, Respondent has had actual knowledge that it cannot provide transportation service other than luxury limousine service; ... (c) continuously since at least 2005, Respondent has advertised and otherwise held itself out, and continues to advertise and otherwise to hold itself out, to the public as a motor carrier that provides taxi service in the Vail Valley for compensation notwithstanding Respondent's knowledge that it is not authorized to provide that transportation service; ... (f) Respondent's distain for abiding by applicable Commission rules continued to the day of the hearing and was manifested by its failure to make any filing in [Proceeding No. 12F-1087CP] and its failure to appear for the evidentiary hearing; ... .

... Common carrier authority is comparatively difficult to obtain, requires proof that the proposed service is in the public interest, and is subject to detailed regulatory controls on the geographic scope and mode of operation of the service. A luxury limousine permit, on the other hand, is available over the counter for a relatively small fee (*see* § 40-10.1-302(2) (requirements for issuance of permit)); allows the carrier to provide transportation throughout the state; and carries with it only very limited regulatory oversight by the Commission. The ALJ finds that it is important to maintain the distinction between luxury limousine service and common carriage and that issuing a cease and desist order against Respondent will help to maintain that distinction.

The ALJ will issue an order that requires Hummers of Vail and ECO Limo of Vail, Vail Taxi Service, Vail Luxury Limo, and Vans to Vail Valley (the entities through which Hummers of Vail conducts its transportation business pursuant to Permit LL-01417), their officers, their executives, their drivers, their agents, and their contractors to do the following: ... immediately to cease and desist from advertising, or in any way offering to the public, any transportation service that is not luxury limousine service authorized by Permit LL-01417. As used here, advertising has the same meaning as that found in Rule 4 CCR 723-6-6001(a): "advise, announce, give notice of, publish, or call attention to by

use of any oral, written, or graphic statement made in a newspaper or other publication, on radio, television, or any electronic medium, or contained in any notice, handbill, sign (including signage on a vehicle), flyer, catalog, or letter, or printed on or contained in any tag or label attached to or accompanying any article of personal property." The cease and desist order will continue in effect until modified by subsequent Commission Order.

* * *

Hummers of Vail and ECO Limo of Vail, Vail Taxi Service, Vail Luxury Limo, and Vans to Vail Valley (the entities through which Hummers of Vail conducts its transportation business pursuant to Permit LL-01417), their officers, their executives, their drivers, their agents, and their contractors: ... immediately shall cease and desist from advertising, or in any way offering to the public, any transportation service that is not luxury limousine service authorized by Permit LL-01417. As used here, advertising has the same meaning as that found in Rule 4 *Code of Colorado Regulations* 723-6-6001(a): "advise, announce, give notice of, publish, or call attention to by use of any oral, written, or graphic statement made in a newspaper or other publication, on radio, television, or any electronic medium, or contained in any notice, handbill, sign (including signage on a vehicle), flyer, catalog, or letter, or printed on or contained in any tag or label attached to or accompanying any article of personal property."

The cease and desist order set out in Ordering Paragraph No. 3 shall continue in effect until and unless modified by subsequent Commission Order.

Note 7 states: In 2011, the Colorado General Assembly repealed articles 10, 11, 13, 14, and 16 of title 40, C.R.S., and enacted article 10.1 of title 40, C.R.S., in their place. Prior to August 10, 2011, a motor carrier (such as Respondent) providing luxury limousine service was regulated by the Commission pursuant to article 16 of title 40, C.R.S. Insofar as relevant to this proceeding, the requirements for, and the limitations on, luxury limousine service in article 16 of title 40, C.R.S., and the requirements for, and the limitations on, luxury limousine service in article 10.1, C.R.S., are the same.

Note 8 states: This Rule is found in the Rules Regulating Transportation by Motor Vehicle, Part 6 of 4 *Code of Colorado Regulations* 723.

31. The cease and desist order in Decision No. R12-1482 remains in effect.

32. As pertinent to the instant Proceeding, Decision No. R14-0001[10] states at ¶¶ 12, 24-30:

> The Complaint [in Proceeding No. 13C-1383EC] notifies Respondent that the Commission will hold a hearing to determine whether Respondent's [Permit] No. LL-01417 should be revoked for failing to pay civil penalties assessed by Decision Nos. R13-0030 and C13-0352 in Proceeding No. 12G-0987EC. ... The Complaint [in Proceeding No. 13C-1383EC] advises Respondent that if it pays the outstanding civil penalties prior to the date of the hearing, that the Complaint will be dismissed. *Id.*
>
> * * *
>
> Decision Nos. R13-0030 and C13-0352 are entitled to a presumption of validity and regularity. *State Bd. Of Chiropractic Examiners, v. Stjernholm*, 935 P.2d 959, 972 (Colo. 1997) (agency actions have a presumption of validity and regularity); *see Public Utilities Comm'n v. District Court of County of Arapahoe*, 431 P.2d 773, 777 (Colo. 1967). And, the Decisions have never been challenged or appealed. Both Decisions are final and conclusive. § 40-6-112(2), C.R.S.; Hearing Exhibits 5 and 6 [in Proceeding No. 13C-1383EC]. Consequently, the ALJ [in Proceeding No. 13C-1383EC] concludes that Decision Nos. R13-0030 and C13-0352 are proper Commission decisions. *See* § 40-10.1-112(1)(c), C.R.S.
>
> As the civil penalties were due and payable immediately, the deadline to abide by Decision Nos. R13-0030 and C13-0352 has long since passed. Hearing Exhibits 5 and 6 [in Proceeding No. 13C-1383EC]. The Commission has given Respondent ample time to pay the civil penalties, having brought the matter to a hearing on December 13, 2013, nearly nine months after the last penalty was ordered. Hearing Exhibits 1 and 6 [in Proceeding No. 13C-1383EC].
>
> The evidence demonstrated that Respondent has failed to abide by and observe the Commission's proper orders to pay the assessed civil penalties in Decision Nos. R13-0030 and C13-0352. *See* Hearing Exhibits 5 through 8 [in Proceeding No. 13C-1383EC].
>
> Respondent has an established history of violating Commission Rules. *See* Hearing Exhibits 5 and 6 [in Proceeding No. 13C-1383EC]. In Decision No. R13-0030, ALJ Jennings-Fader discussed Respondent's history violating Rule [4 CCR 723-6-6309(a)] at length, noting that Respondent's violations of that rule dates back to January 2007. Hearing Exhibit 5 [in Proceeding No. 13C-1383EC]. Respondent has also demonstrated a pattern of failing to abide

[10] Decision No. R14-0001 was issued on January 2, 2014 in Proceeding No. 13C-1383EC, *In the Matter of Alleged Violations of Colorado Revised Statutes and Commission Rules Relating to the Non-Payment of the Civil Penalties Assessed to HummersofVail, Inc., Owner of Luxury Limousine Registration No. LL-01417*. Decision No. R14-0001 is Hearing Exhibit No. 5.

> by Commission decisions to pay civil penalties. Respondent's history shows its substantial contempt for the Commission's authority.
>
> Respondent's contempt for the Commission's authority was manifested on the day [of] the hearing by its failure to appear [in Proceeding No. 13C-1383EC].
>
> Respondent has not shown good cause (or any cause) for its failure to pay the Commission's lawfully assessed civil penalties, or for its failure to appear at the hearing.
>
> For the foregoing reasons and authorities, Respondent's luxury limousine [Permit No.] LL-01417 should be revoked.

33. As discussed in Decision No. C14-0196, issued in Proceeding No. 13C-1383EC on February 24, 2014: after Decision No. R14-0001 was issued, HummersofVail paid the assessed civil penalties and, by doing so, avoided the revocation of Permit No. LL-01417.

**D. This Proceeding.**

34. Decision No. R12-1482 became a Commission Decision on January 20, 2013. That Decision contains a cease and desist order that orders HummersofVail, ECOLimoOfVail, VailTaxiService, VailLuxuryLimo, and VansToVailValley immediately to cease and desist advertising, or otherwise offering to the public, any transportation service that is not luxury limousine service.

35. The cease and desist order specifically lists advertising in "any electronic medium." Decision No. R12-1482 at ¶ 65 and Ordering Paragraph No. 3. A website is an electronic medium within the meaning of, and the scope of, the cease and desist order.

36. As defined in § 40-10.1-301(8), C.R.S., and Rule 4 CCR 723-6-6301(e), luxury limousine service expressly excludes taxi service.[11]

[11] Section 40-10.1-101(19), C.R.S., and Rule 4 CCR 723-6-6201(r) define taxicab service.

37. The Commission has neither modified nor vacated Decision No. R12-1482, which remains in full force and effect.

38. In November 2013, the Commission received a complaint that Respondent was advertising on the Internet as a taxi service. As a result of that complaint, Staff witness Schlitter initiated an investigation of Respondent.

39. As part of that investigation, in November 2013 Staff witness Schlitter conducted a web search using the Google search engine and the search term "taxi service in Vail, Colorado." As a result of that search, Staff witness Schlitter learned of the existence of the HummersofVail website; the VailTaxiService website; and the Dui Busters website.

40. As part of that investigation, Staff witness Schlitter also conducted a web search using the White Pages on-line and the Yahoo search engine. He used the search term "taxi service in Vail, Colorado." Those searches also revealed the Dui Busters website.

41. From November 2013 through August 2015, as part of his investigation of Respondent, Staff witness Schlitter conducted approximately 20 web searches and website visits.

42. The investigation began in November 2013. The Complaint issued on February 26, 2015. In that period of time, Staff witness Schlitter did not contact Respondent about the investigation.

43. From the time a change is made, it may take up to 48 hours for the change to appear on Respondent's website or on its trade name websites. Tr. at 87:16-17.

44. In Respondent witness Levine's opinion, "local taxi service is something different from taxi" and there is confusion with respect to that issue (Tr. at 89:6-10). On this point, the following exchange occurred:

| | |
|---|---|
| [Respondent's counsel:] | Did you believe, "taxi," was a generic term? |
| [Respondent witness Levine:] | I believe the industry believes, "taxi," Uber, Lyft, limo, shuttle, are all terms of point-to-point transportation. |

Tr. at 89:19-23.

45. On the evening of October 13, 2015, Respondent witness Levine visited the VailTaxiService website to ascertain whether the phrase Vail Taxi Service had been removed from the website. It had been removed.

46. The evidence does not establish which (if any) additional websites associated with Respondent -- *i.e.*, HummersofVail, ECOLimoOfVail, VailLuxuryLimo, and VansToVailValley -- Respondent witness Levine may have visited on October 13, 2015.

47. October 13, 2015 was the day before the October 14, 2015 evidentiary hearing; was two years and nine months after the effective date of Decision No. R12-1482; and was seven and one-half months after the Commission issued the Complaint.

**1. HummersofVail.**

48. Respondent is named in the cease and desist order in Decision No. R12-1482 at Ordering Paragraph No. 3 (prohibiting the advertising of, or offering to provide, a transportation service that is not luxury limousine service).

49. Decision No. R12-1482 at ¶ 29 states:

> As of November 2012, the on-line home page and advertising of Hummers of Vail stated, in part: "Local Taxi Service and Airport Service (970) 977-0028" (Hearing Exhibit No. 8 [in Proceeding No. 12F-1087CP] at 1); "Been serving the Vail Valley for 9 years!" (*id.*); and "VAIL's best Taxi Service - Best Price and

Best Service!" (*id*. at 3). Under "Services," the on-line home page and advertising for Hummers of Vail described its "Local Taxi Service" (*id*. at 3). *See also* Hearing Exhibit No. 9 [in Proceeding No. 12F-1087CP] (results of Internet search for topic "Vail Taxi").

50. On November 25, 2013, Staff witness Schlitter visited the HummersofVail website. This was ten months after the effective date of Decision No. R12-1482.

51. Hearing Exhibit No. 6 is a three-page document that is a print-out of HummersofVail website (hummersofvail.com) pages as they existed on November 25, 2013.

52. On that date, the HummersofVail website caption read: "HummersofVail, Inc. - Local *Taxi Service* and Airport Service (970) 977-0028" (Hearing Exhibit No. 6 at 1 *passim*). The website described HummersofVail as "*VAIL's Best TAXI Service* - Best Price and Best Service!" (Hearing Exhibit No. 6 at 1 and 2 (capitals in original) (emphasis supplied)). Under "Services," the website described HummersofVail as offering:

Local *Taxi Service*:

- We only use H2 Hummers with studded Tires
- We are open 24hrs a day - we never close!
- Safety and style for the same price or less then [*sic*] a minivan TAXI!

Hearing Exhibit No. 6 at 3 (capitals in original) (emphasis supplied).

53. The relevant taxi service-related language on the website had not changed since November 2012. On November 25, 2013, the website advertised or otherwise offered to provide to the public a transportation service that Respondent is not authorized to provide: taxicab service.

54. On July 1, 2014, Staff witness Schlitter again visited the HummersofVail website. This was one year and five months after the effective date of Decision No. R12-1482.

55. Hearing Exhibit No. 9 is a three-page document that is a print-out of HummersofVail website (hummersofvail.com) pages as they existed on July 1, 2014.

56. On that date, the HummersofVail website caption read: "HummersofVail, Inc. - Local *Taxi Service* and Airport Service (970) 977-0028" (Hearing Exhibit No. 9 at 1 *passim*). The website described HummersofVail as "*VAIL's Best TAXI Service* - Best Price and Best Service!" (Hearing Exhibit No. 9 at 1 and 2 (capitals in original) (emphasis supplied)). Under "Services," the website described HummersofVail as offering:

> Local *Taxi Service*:
>
> We only use H2 Hummers with studded Tires
>
> We are open 24hrs a day - we never close!
>
> Safety and style for the same price or less then [*sic*] a minivan TAXI!

Hearing Exhibit No. 9 at 3 (capitals in original) (emphasis supplied).

57. The relevant taxi service-related language on the website had not changed since November 2012. On July 1, 2014, the website advertised or otherwise offered to provide to the public a transportation service that Respondent is not authorized to provide: taxicab service.

58. On July 1, 2014, the HummersofVail website did not include the phrase PUC Permit No. LL-01417 or any mention or identification of the luxury limousine permit held by HummersofVail.

59. July 1, 2014 was four and one-half months after the February 14, 2014 effective date of Rule 4 CCR 723-6-6016(g).

60. On April 27, 2015, Staff witness Schlitter again visited the HummersofVail website. This was two years and three months after the effective date of Decision No. R12-1482. This was three months after the Commission issued the Complaint.

61. Hearing Exhibit No. 16 is a one-page document that is a print-out of a HummersofVail website (hummersofvail.com) page as it existed on April 27, 2015.

62. On that date, the HummersofVail website read: "HummersofVail, Inc. - Local *Vail Taxi-Uber Limo Service* and Airport Service (970) 977-0028" (Hearing Exhibit No. 16 at 1). The website described HummersofVail as "*VAIL's Best TAXI-Uber-Limo Service* - Best Price and Best Service!" (*id*. (capitals in original) (emphasis supplied)). This is a language change in the HummersofVail website from July 1, 2014.

63. The relevant taxi service-related language on the website had not changed since November 2012. On April 27, 2015, the website advertised or otherwise offered to provide to the public a transportation service that Respondent is not authorized to provide: taxicab service.

64. On April 27, 2015, the website advertised or otherwise offered to provide to the public a second transportation service that Respondent is not authorized to provide: limo service. Limo service or limousine service is a type of transportation that is different from luxury limousine service.[12] Pursuant to § 40-10.1-201(1), C.R.S., to operate as a limousine service, one must have a CPCN from the Commission. Respondent does not have a CPCN to provide limousine service or any other type of common carrier transportation service.

65. On April 27, 2015, the HummersofVail website did not include the phrase PUC Permit No. LL-01417 or any mention or identification of the luxury limousine permit held by HummersofVail.

66. April 27, 2015 was one year and two and one-half months after the February 14, 2014 effective date of Rule 4 CCR 723-6-6016(g).

[12] Rule 4 CCR 723-6-6201(j) defines limousine service and states in pertinent part: "The term 'limousine service' is distinguished from the term 'luxury limousine service' as used in Article 10.1 of Title 40, C.R.S."

67. On August 17, 2015, Staff witness Schlitter again visited the HummersofVail website. This was two years and seven months after the effective date of Decision No. R12-1482. This was five and one-half months after the Commission issued the Complaint.

68. Hearing Exhibit No. 18 is a two-page document that is a print-out of HummersofVail website (hummersofvail.com) pages as they existed on August 17, 2015.

69. On that date, the HummersofVail website read: "HummersofVail, Inc. - VAIL LOCAL and AIRPORT Service (970) 977-0028" (Hearing Exhibit No. 18 at 1 *passim*). This is a language change in the HummersofVail website from April 27, 2015.

70. On August 17, 2015, under "Services," the website described HummersofVail as offering:

Local *Taxi Service*:

- We only use H2 Hummers with studded Tires
- We are open 24hrs a day - we never close!
- Safety and style for the same price or less then [*sic*] a minivan TAXI!

Hearing Exhibit No. 18 at 2 (capitals in original) (emphasis supplied).

71. The relevant taxi service-related language under "Services" on the website had not changed since November 2012. On August 17, 2015, the website advertised or otherwise offered to provide to the public a transportation service that Respondent is not authorized to provide: taxicab service.

72. There is no evidence that, as of the date of the evidentiary hearing, the phrase taxi service had been removed from the HummersofVail website.

73. On August 17, 2015, the phrase limo service had been removed from the HummersofVail website.

74. On August 17, 2015, the HummersofVail website did not include the phrase PUC Permit No. LL-01417 or any mention or identification of the luxury limousine permit held by HummersofVail.

75. August 17, 2015 was one year and six months after the February 14, 2014 effective date of Rule 4 CCR 723-6-6016(g).

**2. VailTaxiService.**

76. VailTaxiService is a trade name of Respondent and is named in the cease and desist order in Decision No. R12-1482 at Ordering Paragraph No. 3 (prohibiting the advertising of, or offering to provide, a transportation service that is not luxury limousine service).

77. Decision No. R12-1482 at ¶ 25 states:

> Vail Taxi Service is one of the entities under whose name Respondent, which has only luxury limousine authority, conducts business. As of December 13, 2012, the on-line home page and advertising for Vail Taxi Service stated, in part: "We started in 2003 to provide the Vail Valley with a luxury Taxi Service at FLAT Rates!" (Hearing Exhibit No. 5 [in Proceeding No. 12F-1087CP] at 1-2); "We are proud to serve the Vail Valley for the past 8 years 24hrs a day!!" (*id*. 2); and "Proudly serving the Vail Valley since 2003 as the best Local Taxi in the Vail Valley!" (*id*.) *See also* Hearing Exhibit No. 9 [in Proceeding No. 12F-1087CP] (results of Internet search for topic "Vail Taxi"; Vail Taxi Service describes itself as "The Only Flat Rate TAXI in Vail Valley!").

78. On November 25, 2013, Staff witness Schlitter visited the VailTaxiService website. This was ten months after the effective date of Decision No. R12-1482.

79. Hearing Exhibit No. 7 is a three-page document that is a print-out of VailTaxiService website (vailtaxiservice.com) pages as they existed on November 25, 2013.

80. On that date, the VailTaxiService website caption read: "Vail Taxi Service (970) 977-0028" (Hearing Exhibit No. 7 at 1 *passim*). The website stated: "We started in 2003 to provide the Vail Valley with a luxury Limo-*Shuttle-Cab-Taxi service* at FLAT rates!" (*id*. at 1

(capitals in original)). The website described VailTaxiService as "Proudly serving the Vail Valley since 2003 as the *best Local Taxi in the Vail Valley*!" (Hearing Exhibit No. 7 at 1 (capitals in original) (emphasis supplied)).

81. The VailTaxiService website changed between November 2012 and November 2013. In 2012, it read: "'We started in 2003 to provide the Vail Valley with a *luxury Taxi Service* at FLAT Rates!' (Hearing Exhibit No. 5 [in Proceeding No. 12F-1087CP] at 1-2)[.]" Decision No. R12-1482 at ¶ 25 (emphasis supplied). On November 25, 2013, the website read: "We started in 2003 to provide the Vail Valley with a *luxury Limo-Shuttle-Cab-Taxi service* at FLAT rates!" (Hearing Exhibit No. 7 at 1 (capitals in original) (emphasis supplied)).

82. The relevant taxi service-related language on the VailTaxiService website had not changed since November 2012. On November 25, 2013, the website advertised or otherwise offered to provide to the public a transportation service that Respondent is not authorized to provide: taxicab service.

83. On November 25, 2013, the website advertised or otherwise offered to provide to the public a second transportation service that Respondent is not authorized to provide: shuttle service.[13] Pursuant to § 40-10.1-201(1), C.R.S., to offer to provide shuttle service, one must hold a CPCN to provide shuttle service. Respondent does not hold a CPCN to provide shuttle service or any other type of common carrier transportation service.

84. On May 30, 2014, Staff witness Schlitter attempted to visit the VailTaxiService website. On that date, he was unable to access the VailTaxiService website, which appeared to have been taken down.

[13] Rule 4 CCR 723-6-6201(j) defines shuttle service.

85. On July 1, 2014, Staff witness Schlitter again visited the VailTaxiService website, which was operational. This was one year and five months after the effective date of Decision No. R12-1482.

86. Hearing Exhibit No. 10 is a three-page document that is a print-out of VailTaxiService website (vailtaxiservice.com) pages as they existed on July 1, 2014.

87. On that date, the VailTaxiService website caption read: "Vail Taxi Service (970) 401-0825" (Hearing Exhibit No. 10 at 1 *passim*). The website stated: "We started in 2003 to provide the Vail Valley with a luxury Limo-*Shuttle-Cab-Taxi service* at FLAT rates!" (*id*. at 1 (capitals in original) (emphasis supplied)). The website described VailTaxiService as "Proudly serving the Vail Valley since 2003 as the *best Local Taxi in the Vail Valley*!" (*id*. (emphasis supplied)).

88. The relevant taxi-related language on the website had not changed since November 2012. On July 1, 2014, the website advertised or otherwise offered to provide to the public a transportation service that Respondent is not authorized to provide: taxicab service.

89. On July 1, 2014, the website advertised or otherwise offered to provide to the public a second transportation service that Respondent is not authorized to provide: shuttle service.

90. On July 1, 2014, the VailTaxiService website did not include the phrase PUC Permit No. LL-01417 or any mention or identification of the luxury limousine permit held by HummersofVail doing business as VailTaxiService.

91. July 1, 2014 was four and one-half months after the February 14, 2014 effective date of Rule 4 CCR 723-6-6016(g).

92. On February 11, 2015, Staff witness Schlitter again visited the VailTaxiService website. This was a little over two years after the effective date of Decision No. R12-1482.

93. Hearing Exhibit No. 13 is a three-page document that is a print-out of VailTaxiService website (vailtaxiservice.com) pages as they existed on February 11, 2015.

94. On that date, the VailTaxiService website caption read: "Vail Taxi Service (970) 401-0825" (Hearing Exhibit No. 13 at 1 *passim*). The website stated: "We started in 2003 to provide the Vail Valley with a luxury Limo-*Shuttle-Cab-Taxi service* at FLAT rates!" (*id*. at 1 (capitals in original) (emphasis supplied)). The website described VailTaxiService as "Proudly serving the Vail Valley since 2003 as the *best Local Taxi in the Vail Valley*!" (*id*. (emphasis supplied)).

95. The relevant taxi-related language on the website had not changed since November 2012. On February 11, 2015, the website advertised or otherwise offered to provide to the public a transportation service that Respondent is not authorized to provide: taxicab service.

96. On February 11, 2015, the website advertised or otherwise offered to provide to the public a second transportation service that Respondent is not authorized to provide: shuttle service.

97. On February 11, 2015, the VailTaxiService website did not include the phrase PUC Permit No. LL-01417 or any mention or identification of the luxury limousine permit held by HummersofVail doing business as VailTaxiService.

98. February 11, 2015 was one year after the February 14, 2014 effective date of Rule 4 CCR 723-6-6016(g).

99. On April 27, 2015, Staff witness Schlitter again visited the VailTaxiService website. Hearing Exhibit No. 17 is a three-page document that is a print-out of VailTaxiService website (vailtaxiservice.com) pages as they existed on that date.

100. On April 27, 2015, the VailTaxiService website caption read: "Vail Taxi Service (970) 401-0825" (Hearing Exhibit No. 17 at 1 *passim*). The website contained the word taxi in Respondent's trade name of VailTaxiService.

101. April 27, 2015 was a little over two months after the February 14, 2015 compliance deadline established in Rule 4 CCR 723-6-6010(b).

102. On April 27, 2015, the VailTaxiService website did not include the phrase PUC Permit No. LL-01417 or any mention or identification of the luxury limousine permit held by HummersofVail doing business as VailTaxiService.

103. April 27, 2015 was one year and two and one-half months after the February 14, 2014 effective date of Rule 4 CCR 723-6-6016(g).

104. On August 17, 2015, Staff witness Schlitter again visited the VailTaxiService website. Hearing Exhibit No. 19 is a one-page document that is a print-out of a VailTaxiService website (vailtaxiservice.com) page as it existed on that date.

105. On August 17, 2015, the VailTaxiService website caption read: "Vail Taxi Service (970) 401-0825" (Hearing Exhibit No. 19 at 1). The website contained the word taxi in Respondent's trade name of VailTaxiService.

106. August 17, 2015 was six months after the February 14, 2015 compliance deadline established in Rule 4 CCR 723-6-6010(b).

107. On August 17, 2015, the VailTaxiService website did not include the phrase PUC Permit No. LL-01417 or any mention or identification of the luxury limousine permit held by HummersofVail doing business as VailTaxiService.

108. August 17, 2015 was one year and six months after the February 14, 2014 effective date of Rule 4 CCR 723-6-6016(g).

109. On August 31, 2015, Staff witness Schlitter again visited the VailTaxiService website. Hearing Exhibit No. 20 is a three-page document that is a print-out of VailTaxiService website (vailtaxiservice.com) pages as they existed on that date.

110. On August 31, 2015, the VailTaxiService website caption read: "Vail Taxi Service (970) 401-0825" (Hearing Exhibit No. 20 at 1 *passim*). The website contained the word taxi in Respondent's trade name of VailTaxiService.

111. August 31, 2015 was six and one-half months after the February 14, 2015 compliance deadline established in Rule 4 CCR 723-6-6010(b).

112. On August 31, 2015, the VailTaxiService website did not include the phrase PUC Permit No. LL-01417 or any mention or identification of the luxury limousine permit held by HummersofVail doing business as VailTaxiService.

113. August 31, 2015 was one year and six and one-half months after the February 14, 2014 effective date of Rule 4 CCR 723-6-6016(g).

114. In August 2015, Respondent began the process of ceasing operations under its trade name VailTaxiService. This process included filing forms to change its trade name VailTaxiService and initiating the process for the filing of new insurance forms. The record contains neither the date on which Respondent filed forms to change its trade name

VailTaxiService nor the date on which Respondent initiated the process for filing new insurance forms.

115. Respondent operated under the trade name VailTaxiService until October 9, 2015. Tr. at 86:21-24. Respondent stopped operating under the trade name VailTaxiService when Respondent received a letter from the Commission. Tr. at 85:11-86:24.

116. October 9, 2015 was eight months after the February 14, 2015 compliance deadline established in Rule 4 CCR 723-6-6010(b).

### 3. ECOLimoOfVail.

117. ECOLimoOfVail is a trade name of Respondent and is named in the cease and desist order in Decision No. R12-1482 at Ordering Paragraph No. 3 (prohibiting the advertising of, or offering to provide, a transportation service that is not luxury limousine service).

118. Decision No. R12-1482 at ¶ 27 states:

> ECO Limo of Vail is one of the entities under whose name Respondent, which has only luxury limousine authority, conducts business. Hearing Exhibit No. 7 [in Proceeding No. 12F-1087CP] lists ECO Limo of Vail under "Local Business results for taxi near Vail, CO." The ECO Limo of Vail listing reads "Local TAXI SERVICE" and contains the telephone number 970.331.3135, which is a telephone number used by Respondent.

119. As part of his investigation of the November 2013 complaint about Respondent, Staff witness Schlitter investigated ECOLimoOfVail because it is one of Respondent's trade names.

120. On August 31, 2015, Staff witness Schlitter visited the ECOLimoOfVail website. This was two years and seven months after the effective date of Decision No. R12-1482. This was over six months after the Commission issued the Complaint.

121. Hearing Exhibit No. 21 is a three-page document that is a print-out of ECOLimoOfVail website (ecolimoofvail.com) pages as they existed on August 31, 2015.

122. On that date, the ECOLimoOfVail website contained the telephone number 970.331.3135, which is the same telephone number as that stated in Decision No. R12-1482. Under "Service," the website stated: "We Provide *local taxi/limo service* to VAIL, BEAVERCREEK [*sic*] and ASPEN!" (Hearing Exhibit No. 20 at 2) (capitals in original) (emphasis supplied)).

123. On August 31, 2015, the website advertised or otherwise offered to provide to the public a transportation service that Respondent is not authorized to provide: taxicab service.

124. There is no evidence that, as of the date of the evidentiary hearing, the phrase taxi service had been removed from the ECOLimoOfVail website.

125. On August 31, 2015, the website advertised or otherwise offered to provide to the public a second transportation service that Respondent is not authorized to provide: limo service. Limo service or limousine service is a type of transportation that is different from luxury limousine service.[14] Pursuant to § 40-10.1-201(1), C.R.S., to operate as a limousine service, one must have a CPCN from the Commission. Respondent does not have a CPCN to provide limousine service or any other type of common carrier transportation service.

126. There is no evidence that, as of the date of the evidentiary hearing, the phrase limo service had been removed from the ECOLimoOfVail website.

[14] Rule 4 CCR 723-6-6201(j) defines limousine service and states in pertinent part: "The term 'limousine service' is distinguished from the term 'luxury limousine service' as used in Article 10.1 of Title 40, C.R.S."

127. On August 31, 2015, the ECOLimoOfVail website did not include the phrase PUC Permit No. LL-01417 or any mention or identification of the luxury limousine permit held by HummersofVail doing business as ECOLimoOfVail.

128. August 31, 2015 was one year and six and one-half months after the February 14, 2014 effective date of Rule 4 CCR 723-6-6016(g).

**4. Dui Busters.**

129. Dui Busters is not named in the cease and desist order in Decision No. R12-1482 at Ordering Paragraph No. 3 (prohibiting the advertising of, or offering to provide, a transportation service that is not luxury limousine service).

130. Decision No. R12-1482 at ¶ 32 states:

> DUI Busters is a name under which Respondent does business, but DUI Busters is not a name under which Respondent does business pursuant to [Permit No. LL-01417]. ...

131. As part of his investigation of the November 2013 complaint about Respondent, on November 25, 2013, Staff witness Schlitter searched on the White Pages website (whitepages.com) using the search term "taxi service in Vail, Colorado." Hearing Exhibit No. 8 is a three-page document that is a print-out of the Dui Busters information obtained as a result of that search.

132. As part of his investigation of the November 2013 complaint about Respondent, on July 1, 2014, Staff witness Schlitter searched Dui Busters using the Yahoo search engine (local.yahoo.com). Hearing Exhibit No. 11 is a one-page document that is a print-out of the Dui Busters information obtained as a result of that search.

133. On February 11, 2015, Staff witness Schlitter again searched Dui Busters using the Yahoo search engine (local.yahoo.com). Hearing Exhibit No. 14 is a two-page document that is a print-out of the Dui Busters information obtained as a result of that search.

134. Dui Busters is associated with Respondent, as established by their having the same address and the same telephone number.

## III. DISCUSSION

135. The evidence establishes that the Commission has subject matter jurisdiction in this Proceeding.

136. The evidence establishes that the Commission has *in personam* jurisdiction over Respondent in this Proceeding.

137. The ALJ considered all arguments of the Parties. Any argument not addressed in this Decision was considered by the ALJ and was found to be not persuasive.

### A. Governing Legal Standards and Principles.

#### 1. Relevant Transportation Statutes and Rules.

138. Section 40-10.1-301(8), C.R.S., defines luxury limousine service as

> a specialized, luxurious transportation service provided on a prearranged, charter basis. "Luxury limousine service" *does not include taxicab service* or any service provided between fixed points over regular routes at regular intervals.

(Emphasis supplied.)

139. Rule 4 CCR 723-6-6301(e) defines luxury limousine service as

> a specialized, luxurious transportation service provided on a prearranged charter basis as defined in [Rule 4 CCR 723-6-6301(a)], memorialized in a contract. "Luxury limousine service" *may not include taxicab service* or any service provided between fixed points over regular routes at regular intervals.

(Emphasis supplied.)

140. The Commission promulgated Rule 4 CCR 723-6-6010(b) as part of amendments to the transportation rules that became effective on February 14, 2014. That Rule provides:

> Any carrier currently operating under a name or trade name that identifies a type of transportation service not currently authorized (e.g., a limited regulation carrier or a common carrier with only call-and-demand shuttle service shall not have taxi in its name) shall alter its name or trade name to comply with this rule within one year after the effective date of these rules.

(Emphasis supplied.) February 14, 2015 was the date by which a motor carrier must be in compliance with this Rule.

141. The Commission promulgated Rule 4 CCR 723-6-6016(c) as part of amendments to the transportation rules that became effective on February 14, 2014. That Rule states, in relevant part: "No motor carrier ... shall offer to provide a transportation service without authority or permit to provide such service."

142. The Commission promulgated Rule 4 CCR 723-6-6016(g) as part of amendments to the transportation rules that became effective on February 14, 2014. That Rule states, in relevant part: "Each advertisement of a luxury limousine carrier in ... any electronic medium, including more than the name and telephone number of the carrier shall include the phrase 'PUC [LL - permit number]'."

143. Decision No. R12-1482 orders: Respondent and its trade names "immediately shall cease and desist from *advertising*, or in any way offering to the public, any transportation service that is not luxury limousine service authorized by" Permit No. LL-01417. Decision No. R12-1482 at Ordering Paragraph No. 3 (emphasis supplied).

144. Section 40-10.1-101(1), C.R.S., defines advertise, as pertinent here, as

> to advise, announce, give notice of, publish, or call attention to by use of any ... written, or graphic statement made in a ... publication, on ... any electronic medium, or contained in any notice, ... flyer, catalog, ... .

145. Rule 4 CCR 723-6-6016(b) states: "Advertising to provide transportation service or advertising transportation service other than by brokerage is an offer to provide the advertised service."

146. Section 40-10.1-201(1), C.R.S., provides (in pertinent part):

> A person shall not ... offer to operate as a common carrier in intrastate commerce without first having obtained from the commission a certificate declaring that the present or future public convenience and necessity requires or will require such operation.

147. As pertinent here, Rule 4 CCR 723-6-6201(f) defines common carrier as

> every person directly or indirectly affording a means of transportation, or any service or facility in connection therewith, within [Colorado] by motor vehicle ... by indiscriminately accepting and carrying passengers for compensation; except that the term does not include ... a limited regulation carrier defined under § 40-10.1-301, C.R.S.

148. Rule 4 CCR 723-6-6201(j) defines limousine service as

> the transportation of passengers by a common carrier on a call-and-demand basis charged at a per-person rate, and the use of the motor vehicle is not exclusive to any individual or group. The term 'limousine service' is distinguished from the term 'luxury limousine service' as used in Article 10.1 of Title 40, C.R.S. This term is only used in historical authorities.

149. Rule 4 CCR 723-6-6201(m) defines shuttle service as "the transportation of passengers by a common carrier on a call-and-demand basis charged at a per-person rate and the use of the motor vehicle is not exclusive to any individual or group."

150. Section 40-10.1-101(19), C.R.S., defines taxicab service as

> passenger transportation in a taxicab on a call-and-demand basis, with the first passenger therein having exclusive use of the taxicab unless such passenger agrees to multiple loading.

*See also* Rule 4 CCR 723-6-6201(r) (same). Section 40-10.1-101(18), C.R.S., defines taxicab as "a motor vehicle with a seating capacity of eight or less, including the driver, operated in taxicab service." *See also* Rule 4 CCR 723-6-6201(q) (same).

151. Rule 4 CCR 723-6-6201(c) defines call-and-demand service as "the transportation of passengers by a common carrier not on schedule."

**2. Burden of Proof and Related Principles.**

152. Staff bears the burden of proof by a preponderance of the evidence. Section 24-4-105(7), C.R.S.; § 13-25-127(1), C.R.S.; Rule 4 CCR 723-1-1500. The evidence must be "substantial evidence," which the Colorado Supreme Court describes as

> such relevant evidence as a reasonable person's mind might accept as adequate to support a conclusion ... it must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.

*City of Boulder v. Colorado Public Utilities Commission*, 996 P.2d 1270, 1278 (Colo. 2000) (quoting *CF&I Steel, L.P. v. Public Utilities Commission*, 949 P.2d 577, 585 (Colo. 1997)). The preponderance standard requires the finder of fact to determine whether the existence of a contested fact is more probable than its non-existence. *Swain v. Colorado Department of Revenue*, 717 P.2d 507 (Colo. App. 1985). A party has met its preponderance of the evidence burden of proof when the evidence, on the whole and however slightly, tips in favor of that party.

153. The Commission has stated that "it is legally permissible for the finder-of-fact to draw reasonable inferences from the evidence presented." Decision No. C07-0669[15] at ¶ 7. Assuming the facts warrant, the ALJ may draw reasonable inferences from the evidence and may find a violation based on those reasonable inferences.

154. Finally, whether Respondent violated the cease and desist order in Decision No. R12-1482 and, if it did, what the appropriate sanctions are, are matters of public interest.

[15] Decision No. C07-0669 was issued on August 7, 2007 in Proceeding No. 07G-092CP, *Colorado Public Utilities Commission v. Michael McMechen, Doing Business as A Better Move*.

The Commission has an independent duty to determine matters that are within the public interest. *Caldwell v. Public Utilities Commission*, 692 P.2d 1085, 1089 (Colo. 1984). As a result, the Commission is not bound by the Parties' proposals. The Commission may do what the Commission deems necessary to assure that the final result is just, is reasonable, is consistent with controlling law, and is in the public interest, provided the record supports the result and provided the reasons for the choices made are stated.

155. The ALJ applied, and was mindful of, these standards and principles in reaching her decision in this Proceeding.

**B. Decision No. R12-1482.**

156. The Complaint rests on three principal allegations: (a) Respondent's violation of Decision No. R12-1482 (Hearing Exhibit No. 4); (b) Respondent's violation of Decision No. R13-0030 (Hearing Exhibit No. 3); and (c) Respondent's violation of Rule 4 CCR 723-6-6016. This discussion focuses on Decision No. R12-1482.

**1. Parties' Positions.**

**a. Staff.**

157. Staff takes the position that Respondent violated the cease and desist order in Decision No. R12-1482 by advertising under HummersofVail or its trade names as taxi service or taxicab service.

158. In support of its position, Staff states: (a) Decision No. R12-1482 contained a detailed discussion of Respondent's (under HummersofVail and its trade names) websites and their language, found that the language on the websites established that Respondent (under HummersofVail and its trade names) was advertising as a taxi service or taxicab service, and ordered Respondent (under HummersofVail and its trade names) immediately to cease and desist

from advertising as taxi service or taxicab service; (b) there is no evidence that Respondent did not receive Decision No. R12-1482; and (c) Respondent does not claim that it had no notice of, or knowledge of, Decision No. R12-1482.

159. Staff also asserts: (a) the cease and desist order defined advertising as defined in Rule 4 CCR 723-6-6001(a), which is a broad definition that includes (as applicable in this Proceeding) advising, announcing, giving notice of, publishing, or calling attention to a transportation service using any electronic medium; (b) as pertinent here, Decision No. R12-1482 prohibits Respondent from using any electronic medium to advertise to the public Respondent's (under HummersofVail or a trade name) offer of taxi service or taxicab service; (c) the evidence -- principally the print-outs of pages from the websites of HummersofVail, VailTaxiService, and ECOLimoOfVail -- establishes that, through at least August 2015, Respondent used taxi and taxi service to describe the transportation services offered by Respondent (under HummersofVail or a trade name); and (d) Respondent (under HummersofVail or a trade name) does not hold authority to provide taxi service, taxicab service, or any other type of common carrier transportation service.

160. Respondent argues that it mistakenly used taxi and taxi service on its websites (under HummersofVail and its trade names) and in its descriptions of the transportation service it provides. In response to that argument, Staff states: (a) the Commission's rules are clear that luxury limousine service and taxi service are separate and distinct types of transportation service; (b) "there is no credible argument that 'taxi service' could possibly refer to any service that is not common carriage" (Staff SOP at 6); and (c) "Decision No. R12-1482 unambiguously ordered Respondent to stop using the word 'taxi' or the term 'taxi service' to describe its services on its website" (*id*. at 7).

161. For these reasons, Staff states, the evidence establishes Respondent's violation of the cease and desist order that prohibited Respondent (under HummersofVail or a trade name) from advertising taxi service or taxicab service.

**b. HummersofVail.**

162. Respondent takes the position that it did not violate the cease and desist order in Decision No. R12-1482 by advertising under HummersofVail or its trade names as taxi service or taxicab service.

163. In support of its position, Respondent asserts: (a) the Commission permitted HummersofVail to use the trade name VailTaxiService and issued Permit No. LL-01417 with that trade name; (b) the Commission has known that Respondent uses the trade name VailTaxiService since at least 2011; (c) "[s]ince 2011, the PUC contacted Respondent numerous times, but until the commencement of this proceeding, no one informed [Respondent] that it needed to change the name 'Vail Taxi Service'" (Respondent SOP at 5); (d) "it would be inherently unfair for the PUC to issue Respondent a license under [the trade name VailTaxiService] and then not expect [Respondent] to advertise under its own name" (*id*. at 4); and (e) in any event, Respondent no longer operates under the trade name VailTaxiService.

164. In addition, Respondent argues that its

> webpages [under HummersofVail and its trade names] are at worst an unartful attempt by a small business owner to convey that his company provides luxury limousine service. Despite the presences of the word "taxi," Respondent's [under HummersofVail and its trade names] webpages clearly indicate that it is a luxury limousine service that provides rides at a flat rate. Moreover, any use of the term "taxi" was done in a generic sense, as Respondent clearly did not provide anything besides luxury limousine service. Revocation of Respondent's license is unwarranted in this situation, especially considering that Respondent has clarified

> his webpages [under HummersofVail and its trade names] to comply with PUC regulations.

Respondent SOP at 6. In particular, Respondent states: (a) the websites reference taxi service in the context of comparing Respondent's luxury limousine service to available taxi service with respect to the rates charged and the quality of the service provided, and nothing prohibits this type of comparative advertising (*id*. at 6-7); (b) "Respondent advertised flat rates throughout its webpages, making it clear that it was offering luxury limousine service" (*id*. at 7); and (c) Staff witness Schlitter testified that flat rates "would be indicative of limo service" (*id*., *quoting* Tr. at 62:23-63:4).[16]

165. Finally, Respondent asserts that, in reaching its decision on whether Respondent violated the advertising cease and desist order in Decision No. R12-1482, the Commission should not consider the Dui Busters information (Hearing Exhibits No. 8 and No. 11) because: (a) Staff did not establish a connection between Dui Busters and Respondent beyond their common address and telephone number; (b) Staff did not establish that Respondent had contact with either White Pages.com or Yahoo, asked either website to include Dui Busters, or paid to place Dui Busters on either website; and (c) Staff witness "Schlitter testified that he had no knowledge if Respondent had any control over the content [of] these websites or where these websites obtained their information" (Respondent SOP at 9).

166. Respondent concludes:

> Respondent's [under HummersofVail and its trade names] website[s] could have been constructed more skillfully, but the information contained on them demonstrated that Respondent offered luxury limousine service at a flat rate.

[16] In its SOP at 8, Respondent addresses Rule 4 CCR 723-6-6310(b) in response to an argument that Staff did not make in its Statement of Position.

> Any confusion was accidental and does not warrant ending Respondent's business.

Respondent SOP at 8.

**2. Discussion.**

167. The Complaint alleges that, following the January 20, 2013 effective date of Decision No. R12-1482 (Hearing Exhibit No. 4), Respondent violated the cease and desist order contained in Ordering Paragraph No. 3 of that Decision.

168. As relevant here, Ordering Paragraph No. 3 of Decision No. R12-1482 states:

> Hummers of Vail and ECO Limo of Vail, Vail Taxi Service, Vail Luxury Limo, and Vans to Vail Valley (the entities through which Hummers of Vail conducts its transportation business pursuant to [Permit No. LL-01417]), their officers, their executives, their drivers, their agents, and their contractors: ... immediately shall cease and desist from advertising, or in any way offering to the public, any transportation service that is not luxury limousine service authorized by [Permit No. LL-01417]. As used here, advertising has the same meaning as that found in Rule 4 *Code of Colorado Regulations* 723-6-6001(a): "advise, announce, give notice of, publish, or call attention to by use of any oral, written, or graphic statement made in a newspaper or other publication, on radio, television, or any electronic medium, or contained in any notice, handbill, sign (including signage on a vehicle), flyer, catalog, or letter, or printed on or contained in any tag or label attached to or accompanying any article of personal property."

The Commission has not modified or vacated the cease and desist order in Decision No. R12-1482 and that cease and desist order remains in effect.

169. To meet its burden of proof on this issue, Staff must prove that, on or after January 20, 2013, Respondent (under HummersofVail or one or more trade names) advertised, or in any way offered to the public, a transportation service that is not luxury limousine service.

170. The evidence establishes that Respondent violated the cease and desist order in Decision No. R12-1482 at Ordering Paragraph No. 3. In addition, the evidence establishes that

Respondent's violation of the cease and desist order continued through the October 14, 2015 evidentiary hearing.

171. The evidence establishes that, at all times relevant to this Proceeding, Respondent was a motor vehicle carrier subject to regulation by the Commission pursuant to Part 6 of article 10.1 of title 40, C.R.S., and predecessor statutes.

172. The evidence establishes that, on May 29, 2008, the Commission issued Permit No. LL-01417 (Hearing Exhibit No. 1) to HummersofVail, Inc., doing business as VailTaxiService and/or ECOLimoOfVail and/or VailLuxuryLimo and/or VansToVail Valley [*sic*].

173. Permit No. LL-01417 states:

> Under the provisions of Section 40-10.1-302(2), C.R.S., the Colorado Public Utilities Commission has issued [Respondent] a permit to operate as a Limited Regulation Carrier to transport passengers, between all points in the State of Colorado. This permit is proof thereof and, as such a copy must be carried in all motor vehicles operated under LUXURY LIMOUSINE Permit No. LL-01417.
>
> *The type of service authorized under this permit is governed by the definition of said permit as found in [§] 40-10.1-301, C.R.S., and the applicable Commission rules governing such operations*.
>
> Full compliance with the laws of the State of Colorado, the rules of the Commission is required to maintain the permit. Failure to comply with the laws of the State of Colorado or the Rules of the Commission will result in civil penalties or revocation.
>
> **This Permit is continuous until canceled or revoked.**
>
> Activation Date: May 29, 2008.

Hearing Exhibit No. 1 at 1 (bolding and capitals in original) (italics supplied). Permit No. LL-01417 is now in effect.

174. The evidence establishes that, since 2008 and at all times relevant to this Proceeding, Respondent was aware of its obligation to comply with applicable statutes and Rules governing its provision of luxury limousine service in Colorado. The evidence establishes that,

at all times relevant to this Proceeding, Respondent was aware of, and was subject to, the provisions of Decision No. R12-1482. This includes the cease and desist provisions.

175. The evidence establishes that, since 2008 and at all times relevant to this Proceeding, Respondent was aware of the definition of luxury limousine service as found in § 40-10.1-301(9), C.R.S., and Rule 4 CCR 723-6-6301(e) and was aware of what Respondent could and could not do when offering to provide luxury limousine service. *First*, in 2008, Respondent had actual notice of its obligation to comply with applicable statutes and Rules governing luxury limousine service. This includes the obligation to know both the definition of luxury limousine service and the aspects that differentiate luxury limousine service from other types of regulated transportation service. *Second*, as a result of the March 27, 2012, meeting held in Vail, Colorado that included (among others) Commission Criminal Investigator Hinson and Respondent witness and owner Levine, Respondent had actual knowledge of: (a) the meaning of luxury limousine service; (b) the Rules governing luxury limousine service and other pertinent transportation Rules, including the Rules that explain or set out the differences between luxury limousine service and other types of transportation service; and (c) the requirements for Respondent's operation as a luxury limousine service. *Third*, in 2012, Respondent signed a Stipulation and Settlement Agreement in which Respondent represented to the Commission that Respondent

> has implemented a new training policy and is stipulating to the fact that [it] *has provided training on the applicable PUC rules and regulations concerning luxury limousine service* and that [it] *will strictly enforce these rules and regulations*.

Decision No. R13-0030 (Hearing Exhibit No. 3) at ¶ 45 (*quoting* Decision No. R12-0636 at Attachment 1 at 3 (emphasis supplied)). *Fourth* and finally, Decision No. R12-1482 contains a detailed discussion of luxury limousine service.

176. For these four principal reasons (as well as the entire evidentiary record), the ALJ finds unpersuasive Respondent's assertions that it did not understand the meaning of luxury limousine service; that its reference to, and use of, taxi and taxi service in its website advertising was the result of Respondent's unartful attempt to describe the transportation service it provides; and that it included its reference to, and used, taxi and taxi service only for the purpose of comparing its luxury limousine service to the taxicab service provided by other motor carriers.

177. HummersofVail is named in the cease and desist order contained in Decision No. R12-1482. The evidence establishes that the HummersofVail website served as a HummersofVail advertisement or offer to provide taxicab service to members of the public. The evidence establishes that HummersofVail is not authorized to provide taxicab service.

178. The evidence establishes that the taxicab service advertisement was on the HummersofVail website through at least the October 14, 2015 evidentiary hearing. October 14, 2015 was two years and nine months after the effective date of Decision No. R12-1482 and seven and one-half months after the Commission issued the Complaint.

179. The evidence establishes that, for the period during which the HummersofVail website advertised taxicab service, Respondent was in violation of the cease and desist order in Decision No. R12-1482.

180. The evidence establishes that the HummersofVail website served as a HummersofVail advertisement or offer to provide limousine service -- as opposed to luxury limousine service -- to members of the public. The evidence establishes that HummersofVail was not, and is not, authorized to provide limousine service.

181. The evidence establishes that the limousine service advertisement was on the HummersofVail website on April 27, 2015. The evidence also establishes that, on August 17, 2015, the HummersofVail website did not contain a reference to limousine service.

182. The evidence establishes that, for the period during which the HummersofVail website advertised limousine service, Respondent was in violation of the cease and desist order in Decision No. R12-1482.

183. VailTaxiService is a HummersofVail trade name and is named in the cease and desist order contained in Decision No. R12-1482. The evidence establishes that the VailTaxiService website served as a HummersofVail, doing business as VailTaxiService, advertisement or offer to provide taxicab service to members of the public. The evidence establishes that HummersofVail, doing business as VailTaxiService, is not authorized to provide taxicab service.

184. The evidence establishes that the taxicab service advertisement was on the VailTaxiService website on November 25, 2013, which was ten month after the effective date of Decision No. R12-1482. The evidence establishes that the advertisement continued through at least February 11, 2015. February 11, 2015 was two years after the effective date of Decision No. R12-1482.

185. The evidence establishes that, for the period during which the VailTaxiService website advertised taxicab service, Respondent was in violation of the cease and desist order in Decision No. R12-1482.

186. The evidence establishes that the VailTaxiService website served as a HummersofVail, doing business as VailTaxiService, advertisement or offer to provide shuttle

service to members of the public. The evidence establishes that HummersofVail, doing business as VailTaxiService, was not, and is not, authorized to provide shuttle service.

187. The evidence establishes that the shuttle service advertisement was on the VailTaxiService website on November 25, 2013, which was ten month after the effective date of Decision No. R12-1482. The evidence establishes that the advertisement was on the VailTaxiService through at least February 11, 2015, which was two years after the effective date of Decision No. R12-1482.

188. The evidence establishes that, for the period during which the VailTaxiService website advertised shuttle service, Respondent was in violation of the cease and desist order in Decision No. R12-1482.

189. ECOLimoOfVail is a HummersofVail trade name and is named in the cease and desist order contained in Decision No. R12-1482. The evidence establishes that the ECOLimoOfVail website served as a HummersofVail, doing business as ECOLimoOfVail, advertisement or offer to provide taxicab service to members of the public. The evidence establishes that HummersofVail, doing business as ECOLimoOfVail, is not authorized to provide taxicab service.

190. The evidence does not establish when the taxi service advertisement first appeared on the ECOLimoOfVail website. The evidence establishes that the taxi service advertisement was on the ECOLimoOfVail website on August 31, 2015, which is two years and seven months after the effective date of Decision No. R12-1482. The evidence establishes that the advertisement was on the ECOLimoOfVail website through at least the October 14, 2015 evidentiary hearing.

191. The evidence establishes that, for the period during which the ECOLimoOfVail website advertised taxicab service, Respondent was in violation of the cease and desist order.

192. The record contains evidence with respect to Dui Busters. The ALJ did not consider the information in Hearing Exhibits No. 8, No. 11, and No. 14 in arriving at her decision in this Proceeding because Dui Busters is not named in the Decision No. R12-1482 cease and desist order.

193. Based on the entire evidentiary record, the ALJ finds that Staff has met its burden of proof to establish Respondent's violation of the cease and desist order contained in Decision No. R12-1482.

194. The evidence establishes that, after the January 20, 2013 effective date of Decision No. R12-1484 (Hearing Exhibit No. 4), Respondent advertised or offered to provide to the public these transportation services that it is not authorized to provide: limousine service, shuttle service, and taxicab service.

195. The evidence establishes that Respondent was in violation of the cease and desist order in Decision No. R12-1482 for the entire period from the January 20, 2013 effective date of Decision No. R12-1482 to the evidentiary hearing in this Proceeding.

196. Having found that Respondent violated the cease and desist order in Decision No. R12-1482, the ALJ will address whether the Commission should sanction Respondent for this violation. This issue is discussed below.

**C. Decision No. R13-0030.**

197. The Complaint rests on three principal allegations: (a) Respondent's violation of Decision No. R12-1482 (Hearing Exhibit No. 4); (b) Respondent's violation of Decision

No. R13-0030 (Hearing Exhibit No. 3); and (c) Respondent's violation of Rule 4 CCR 723-6-6016. This discussion focuses on Decision No. R13-0030.

198. In the Staff SOP at 1 note 1, Staff states: "Although the Formal Complaint alleged violations of a separate cease and desist order contained in Decision No. R13-0030 [Hearing Exhibit No. 3], Staff did not pursue this claim at hearing."

199. Based on Staff's representation, the ALJ finds that Staff no longer relies on the allegation that Respondent violated Decision No. R13-0030. As a consequence, the ALJ did not consider Respondent's alleged violation of Decision No. R13-0030 in arriving at her decision in this Proceeding. In addition, although not a basis for her decision, the ALJ notes that the record contains no evidence to support this allegation.

**D. Rule 4 *Code of Colorado Regulations* 723-6-6016.**

200. The Complaint rests on three principal allegations: (a) Respondent's violation of Decision No. R12-1482 (Hearing Exhibit No. 4); (b) Respondent's violation of Decision No. R13-0030 (Hearing Exhibit No. 3); and (c) Respondent's violation of Rule 4 CCR 723-6-6016. This discussion focuses on Rule 4 CCR 723-6-6016.

**1. Parties' Positions.**

201. Staff did not discuss this allegation in its SOP.

202. In its SOP at 6, Respondent asserts that, as of the date of the evidentiary hearing, the website advertising for Respondent (HummersofVail and its trade names) complies with applicable Rules.

**2. Discussion.**

203. The Complaint at ¶ 4 states that Respondent "has repeatedly refused to comply with Commission Rules, in particular" Rule 4 CCR 723-6-6016. This statement provided notice that Respondent's compliance with Rule 4 CCR 723-6-6016 is at issue in this Proceeding.

204. To meet its burden of proof on this allegation, Staff must prove that, on or after the Rule's effective date, Respondent (under HummersofVail or one or more trade names) failed to comply with one or more provisions of Rule 4 CCR 723-6-6016.

205. Rule 4 CCR 723-6-6016 pertains to offering transportation service and contains requirements with which a motor carrier must comply. This is one of several Rules that govern Respondent's operation as a luxury limousine pursuant to Permit No. LL-01417. As a condition of maintaining Permit No. LL-01417, Respondent is required to comply with applicable provisions of Rule 4 CCR 723-6-6016. Permit No. LL-01417 (Hearing Exhibit No. 1) at 1 ("Full compliance with the laws of the State of Colorado, the rules of the Commission is required to maintain this permit.").

**a. Rule 4 *Code of Colorado Regulations* 723-6-6016(c).**

206. In relevant part, Rule 4 CCR 723-6-6016(c) provides: "No motor carrier ... shall offer to provide a transportation service without authority or permit to provide the advertised service." The Rule became effective on February 14, 2014.

207. Rule 4 CCR 723-6-6016(b) provides: "Advertising to provide transportation service or advertising transportation service other than by brokerage is an offer to provide the advertised service." The Rule became effective on February 14, 2014.

208. Based on the entire evidentiary record, the ALJ finds that Staff has met its burden of proof to establish Respondent's violation of Rule 4 CCR 723-6-6016(c).

209. The evidence establishes that the webpages of Respondent (HummersofVail and its trade names) are Respondent's advertisements contained in an electronic medium.

210. The evidence that establishes Respondent's violation of the cease and desist order in Decision No. R12-1482 is discussed above. The same evidence establishes that Respondent (HummersofVail and one or more of its trade names), through advertisements (webpages), offered to provide these transportation services that Respondent was not, and is not, authorized to provide: limousine service, shuttle service, and taxicab service. The evidence establishes that Respondent violated Rule 4 CCR 723-6-6016(c).

211. The evidence that establishes the duration of Respondent's violation of the cease and desist order in Decision No. R12-1482 is discussed above. The same evidence establishes that Respondent's violation of Rule 4 CCR 723-6-6016(c) continued from at least July 1, 2014 through the October 14, 2015 evidentiary hearing.

212. Having found that Respondent violated Rule 4 CCR 723-6-6016(c), the ALJ will address whether the Commission should sanction Respondent for this violation. This issue is discussed below.

**b. Rule 4 *Code of Colorado Regulations* 723-6-6016(g).**

213. Rule 4 CCR 723-6-6016(g) provides, in relevant part: "Each advertisement of a luxury limousine carrier in ... any electronic medium, including more than the name and telephone number of the carrier shall include the phrase "PUC [LL - permit number]." The Rule became effective on February 14, 2014.

214. The evidence establishes that the webpages of Respondent (HummersofVail and its trade names) are Respondent's advertisements contained in an electronic medium.

215. Hearing Exhibits No. 9, No. 10, No. 12, No. 13, and Nos. 16 through 21 are print-outs of pages from the advertisements (websites) of HummersofVail, VailTaxiService, and ECOLimoOfVail as those advertisements (websites) existed on various dates between July 1, 2014 and August 31, 2015.

216. The evidence establishes that each of the advertisements (websites) contains the name and telephone number of Respondent (HummersofVail or one of its trade names) and a significant amount of additional information about the carrier and the transportation services the carrier offers to provide.

217. The evidence establishes that none of the advertisements (websites) contains the phrase, or otherwise references, PUC Permit No. LL-01417.

218. The evidence establishes that August 31, 2015 was the last date on which Staff witness Schlitter visited Respondent's (HummersofVail and its trade names) advertisements (websites).

219. The evidence establishes that, on October 13, 2015, Respondent witness Levine examined at least one of Respondent's websites for the purpose of determining whether taxi had been removed from the trade name VailTaxiService. This is the only evidence concerning Respondent's examination of, or check of, its websites (HummersofVail and its trade names) for compliance with applicable Rules.

220. There is no evidence that, between August 31, 2015 and the October 14, 2015 evidentiary hearing, Respondent modified its advertisements (websites) for HummersofVail, VailTaxiService, and ECOLimoOfVail (or any of them) to include the phrase, or any reference to, PUC Permit No. LL-01417.

221. Based on the entire evidentiary record, the ALJ finds that Staff has met its burden of proof to establish Respondent's violation of Rule 4 CCR 723-6-6016(g).

222. The evidence establishes that Respondent violated Rule 4 CCR 723-6-6016(g).

223. The evidence establishes that Respondent's violation of Rule 4 CCR 723-6-6016(g) began not later than July 1, 2014 and continued through at least the October 14, 2015 evidentiary hearing.

224. Having found that Respondent violated Rule 4 CCR 723-6-6016(g), the ALJ will address whether the Commission should sanction Respondent for this violation. This issue is discussed below.

### E. Rule 4 *Code of Colorado Regulations* 723-6-6010(b).

225. Rule 4 CCR 723-6-6010(b) is not one of the three principal bases for the Complaint.

#### 1. Parties' Positions.

##### a. Staff.

226. Staff takes the position that Respondent violated Rule 4 CCR 723-6-6010(b).

227. In support of its position, Staff states: (a) Rule 4 CCR 723-6-6010(b) required Respondent to remove taxi from its trade name VailTaxiService not later than February 14, 2015; (b) the evidence establishes that Respondent failed to comply with Rule 4 CCR 723-6-6010(b) by the February 2015 deadline; and (c) Respondent "provided no reason ... why it has continued to violate the Commission's rules" (Staff SOP at 8).

**b. HummersofVail.**

228. Respondent takes the position that it did not violate Rule 4 CCR 723-6-6010(b) and that, in any event, it has ceased operating under the trade name VailTaxiService.

229. In support of its position, Respondent asserts: (a) the Commission permitted HummersofVail to use the trade name VailTaxiService and issued Permit No. LL-01417 (Hearing Exhibit No. 1) with that trade name; (b) the Commission has known that Respondent uses the trade name VailTaxiService since at least 2011; (c) "[s]ince 2011, the PUC contacted Respondent numerous times, but until the commencement of this proceeding, no one informed [Respondent] that it needed to change the name 'Vail Taxi Service'" (Respondent SOP at 5); (d) "it would be inherently unfair for the PUC to issue Respondent a license under [the trade name VailTaxiService] and then not expect [Respondent] to advertise under its own name" (*id*. at 4); (e) Rule 4 CCR 723-6-6010(b) "went into effect ***after*** Investigator Schlitter had already executed is affidavit and the [Commission] sent its Formal Notice of Complaint" (*id*. at 5 (emphasis in original and footnote omitted)); and (f) "Respondent has ceased operating under" the trade name VailTaxiService (*id*. at 6).

**2. Discussion.**

230. The Complaint at ¶ 4 states that Respondent "has repeatedly refused to comply with Commission Rules[.]" This statement provides notice that Respondent's compliance with the Rules governing transportation in general, and luxury limousine service in particular, is at issue in this Proceeding. The ALJ finds that the Complaint provided adequate notice that Respondent's compliance with Rule 4 CCR 723-6-6010(b) might be at issue in this Proceeding.

231. In addition, the testimonial and documentary evidence pertaining to Rule 4 CCR 723-6-6010(b) -- including the testimony of Respondent witness Levine about Respondent's

efforts to remove Taxi from the HummersofVail trade name VailTaxiService -- was introduced and admitted without objection. The ALJ finds that, to the extent the Complaint may not have provided adequate notice that Rule 4 CCR 723-6-6010(b) might be at issue in this Proceeding, Respondent's failure to object to the introduction and admission of evidence pertaining to Respondent's alleged violation of Rule 4 CCR 723-6-6010(b) constituted a waiver of any objection Respondent may have had to the introduction of this issue.

232. To meet its burden of proof, Staff must prove that Respondent failed to remove the word taxi from its trade name VailTaxiService by the February 14, 2015 deadline.

233. Rule 4 CCR 723-6-6010 pertains to offering transportation service and contains requirements with which a motor carrier must comply. This is one of the Rules governing Respondent's operation as a luxury limousine service pursuant to Permit No. LL-01417. As a condition of maintaining Permit No. LL-01417, Respondent is required to comply with applicable provisions of Rule 4 CCR 723-6-6010. Permit No. LL-01417 (Hearing Exhibit No. 1) at 1 ("Full compliance with the laws of the State of Colorado, the rules of the Commission is required to maintain this permit.").

234. As relevant here, Rule 4 CCR 723-6-6010(b) provides:

> Any motor carrier currently operating under a name or trade name that ... identifies a type of transportation service not currently authorized (e.g., a limited registration carrier ... shall not have taxi in its name) shall alter its name or trade name to comply with this rule within one year after the effective date of

this Rule. The Rule became effective on February 14, 2014.

235. Respondent operates under four trade names: (a) VailTaxiService; (b) ECOLimoOfVail; (c) VailLuxuryLimo; and (d) VansToVailValley. Respondent was required to alter, not later than February 14, 2015, each trade name as necessary to remove a reference to

a transportation service Respondent is not authorized to provide. Thus, not later than February 15, 2015, Respondent had to remove taxi from its trade name VailTaxiService.

236. The evidence establishes that Respondent operated under the trade name VailTaxiService until October 9, 2015, when Respondent received a letter from the Commission. October 9, 2015 was eight months after the February 14, 2015 compliance deadline established in Rule 4 CCR 723-6-6010(b).

237. The ALJ finds Respondent's arguments to be unpersuasive and irrelevant.

238. First, Rule 4 CCR 723-6-6010(b) (effective on February 14, 2014) forbade Respondent's use of the trade name VailTaxiService after February 15, 2015. This change in the law renders irrelevant the Respondent's argument that, in 2008, by the issuance of Permit No. LL-01417, the Commission permitted Respondent to use the trade name VailTaxiService.

239. Second, Respondent admits that it took no action to comply with Rule 4 CCR 723-6-6010(b) until August 2015 at the earliest and did not come into compliance with Rule 4 CCR 723-6-6010(b) until October 9, 2015. Respondent admits that it did not comply with Rule 4 CCR 723-6-6010(b) until months after the February 15, 2015 compliance deadline. This renders unpersuasive Respondent's argument that it is now in compliance with the Rule.

240. Third, as pertinent here, Rule 4 CCR 723-6-6010(b) provided a one-year period for Respondent to change its trade name VailTaxiService to remove taxi. By its own admission, Respondent did not begin to take action to comply with Rule 4 CCR 723-6-6010(b) until August 2015 (at the earliest), which is 18 months after Rule 4 CCR 723-6-6010(b) became effective and 6 months after the February 14, 2015 compliance deadline. There is no evidence, let alone persuasive evidence, to explain Respondent's delay. This renders unpersuasive Respondent's argument that it is now in compliance with the Rule.

241. Fourth, Rule 4 CCR 723-6-6010(b) became effective on February 14, 2014; the compliance deadline was February 14, 2015; and the Commission issued the Complaint on February 26, 2015, after the compliance deadline had passed. This renders unpersuasive, if not irrelevant, Respondent's argument based on the timing of the Complaint.

242. Based on the entire evidentiary record, the ALJ finds that Staff has met its burden of proof to establish Respondent's violation of Rule 4 CCR 723-6-6010(b).

243. The evidence establishes that Respondent violated Rule 4 CCR 723-6-6010(b) because, between February 14, 2015 and October 9, 2015, it had taxi in its trade name VailTaxiService.

244. Having found that Respondent violated Rule 4 CCR 723-6-6010(b), the ALJ will address whether the Commission should sanction Respondent for this violation. This issue is discussed below.

**F. Sanction.**

245. The ALJ has found that Respondent violated the cease and desist order in Decision No. R12-1482, violated Rule 4 CCR 723-6-6010(b), violated Rule 4 CCR 723-6-6016(c), and violated Rule 4 CCR 723-6-6016(g). The ALJ has determined the duration of each violation. The ALJ now considers the issue of the sanction to be imposed on Respondent for the violations.

**1. Parties' Positions.**

**a. Staff.**

246. In this case, Staff seeks a Decision that: (a) permanently revokes Permit No. LL-01417; and (b) orders that Respondent, its principals, its officers, its directors, and its

members are permanently ineligible to hold a luxury limousine permit, whether under the name of Respondent or any other name.

247. In support of its request, Staff states: (a) Respondent has been in continuous and flagrant violation of the cease and desist order in Decision No. R12-1482 since that Decision's January 20, 2013 effective date; (b) Respondent repeatedly has violated applicable Rules, which has resulted in the issuance of Decisions assessing civil penalties and containing cease and desist orders; (c) Respondent repeatedly has disregarded Decisions ordering it to pay civil penalties; (d) Respondent repeatedly has disregarded Decisions containing cease and desist orders; (e) Respondent does not take action to pay assessed civil penalties or to comply with applicable Rules (or both) until forced to do so by Commission action (*e.g.*, commencement of revocation proceedings); and (f) "[i]t continues to be a burden on Staff and Commission resources to engage in protracted proceedings designed to seek Respondent's compliance with the Commission's regulations" (Staff SOP at 10).

248. Staff concludes:

> Penalty assessments have not worked.
>
> Cease and desist orders have been ignored.
>
> Staff, therefore, has no other option than to ask that an order issue permanently revoking Permit No. LL-01417. Pursuant to sections 40-10.1-12 and 40-10.1-302, C.R.S., the Commission has the authority to revoke the motor carrier's permit, and this revocation applies to the principals, officers, directors, and members. While both contain language suggesting a two-year revocation period, the statutes themselves do not set limits on the Commission's authority to impose a longer period of revocation. Thus, the scope of the sanction should be based upon the extent of the violations committed by the Respondent.
>
> To ensure the ALJ's order has its desired effect, and to prevent the Respondent from engaging in similar behavior under a new name and permit number, the order of revocation should be permanent, and should prohibit

> Respondent, its owners, officers, and managers from obtaining a new luxury limousine permit under any other name.

Staff SOP at 10.

**b. HummersofVail.**

249. Respondent takes the position that any punishment would be excessive because Respondent now complies with the cease and desist order in Decision No. R12-1482 and applicable Rules. In the event a violation is found, Respondent takes the position that permanent revocation of Permit No. LL-01417 (Hearing Exhibit No. 1) is not the appropriate remedy.

250. In support of its position, Respondent asserts: (a) the Commission "seeks to permanently revoke Respondent's license based upon the content on Respondent's webpages, not any operational violations related to providing luxury limousine service" (Respondent SOP at 9); (b) "any use of the term 'taxi' was not, in itself, violative of the cease and desist order" (*id*. at 2); (c) Staff did not establish or demonstrate that Respondent's actions pose any significant threat to public safety (*id*. at 10-13); (d) Respondent now "is in compliance with all applicable regulations" (*id*. at 13), which demonstrates that "Respondent is capable of coming in line with applicable regulations without the need of resorting to draconian measures such as permanent revocation" (*id*. at 10); (e) "Respondent has worked in good faith to come into compliance with all applicable regulations and prevent future similar violations" (*id*. at 14); (f) "Respondent ... ceased operating under the 'Vail Taxi Service' trade name several month before the hearing, in order to reduce the confusion that accompanied the [Commission's] approval and acceptance of the trade name, and then determination that its name, by itself, constituted advertising" (*id*.); (g) Respondent has retained compliance counsel (*id*. at 2); (h) Respondent retained counsel in this Proceeding, which "demonstrates Respondent's attention to [Commission] procedures and regulations, as well as [Respondent's] commitment to adherence and compliance to

[Commission] regulations" (*id*. at 14); (i) "as demonstrated by the [Commission's] decision to wait a year, the nature of any alleged violations caused by Respondent's website cannot be consider[ed] grave or serious" (*id*.); (j) the "inherent confusion that accompanied the [Commission's] actions in allowing Respondent to operate under its trade name, even after a formal hearing focused on advertising, severely diminish[es] Respondent's culpability and any bad-faith that might be attributed to Respondent's actions" (*id*.); (k) "Respondent is a small-business owner that provides a valuable service to the Vail Valley" (*id*. at 15); (*l*) "permanent revocation would by definition destroy Respondent's ability to continue business, thereby depriving a community that depends on carriers such as Respondent as a valuable transportation resource" (*id*.); and (m) the evidence does not support Staff's "claims that [Respondent] is a habitual rule-breaker" (*id*.).

251. Respondent concludes:

> An analysis of [Rule 4 CCR 723-1-1302(b)'s] factors demonstrates that even if Respondent violated [Commission] regulations, the non-operational nature of the violations, the complete compliance, the lack of culpability, the confusing nature of Respondent's trade name, the severe harm that would occur to Respondent's business if its license were revoked all suggest leniency. For these reason[s], should the [Commission] find Respondent to be culpable, it should avoid revocation of Respondent's license.

Respondent SOP at 16.

**2. Discussion.**

252. As pertinent here, § 40-10.1-112, C.R.S., provides:

> (1) Except as specified in [§ 40-10.1-112(3), C.R.S.], the commission, at any time, by order duly entered, after hearing upon notice to the motor carrier and *upon proof of violation, may issue an order to cease and desist or may suspend, revoke, alter, or amend any ... permit* issued to the motor carrier under [article 10.1 of title 40, C.R.S.,] for the following reasons:
>
> * * *

> (c) A violation or refusal to observe any of the proper orders or rules of the commission[.]

(Emphasis supplied.)

253. The ALJ has found that Respondent violated the cease and desist order in Decision No. R12-1482 and Rules 4 CCR 723-6-6010(b), 723-6-6016(c), and 723-6-6016(g). The ALJ has determined the duration of each violation.

254. Pursuant to § 40-10.1-112(1), C.R.S., the Commission has discretion with respect to the sanction to be imposed for these violations.

**a. Revocation.**

255. Based on the entire record in this Proceeding, the ALJ finds that permanent revocation of Permit No. LL-01417 for cause is the appropriate sanction for Respondent's violations. For the following reasons, the ALJ will order the revocation of Permit No. LL-01417 for cause.

256. *First*, Respondent's violation of the cease and desist order in Decision No. R12-1482 was knowing; was willful; and was continuous from January 20, 2013 (the effective date of Decision No. R12-1482). In addition, Respondent's violation of Rules 4 CCR 723-6-6010(b), 723-6-6016(c), and 723-6-6016(g) was knowing; was willful; and was continuous, although the time period is different for each Rule.

257. The evidence establishes that, at all times relevant to this Proceeding and although aware of its obligation to take action, Respondent either took no action for failed to take prompt action to comply with the statute, the applicable Rules, and the cease and desist order in Decision No. R12-1482.

258. The evidence establishes that, since 2008 and at all times relevant to this Proceeding, Respondent had actual notice of the definition of luxury limousine service as found in § 40-10.1-301(9), C.R.S., and Rule 4 CCR 723-6-6301(e) and has actual knowledge of what it could and could not do when offering to provide luxury limousine service.

259. In 2008, Respondent had actual notice of its obligation to comply with applicable statutes and Rules governing luxury limousine service. This includes the obligation to know both the definition of luxury limousine service and the aspects that differentiate luxury limousine service from other types of regulated transportation service.

260. As a result of the March 27, 2012 meeting held in Vail, Colorado that included (among others) Commission Criminal Investigator Hinson and Respondent witness and owner Levine, Respondent had actual knowledge of: (a) the meaning of luxury limousine service; (b) the Rules governing luxury limousine service and other pertinent transportation Rules, including the Rules that explain or set out the differences between luxury limousine service and other types of transportation service; and (c) the requirements for Respondent's operation as a luxury limousine service.

261. In 2012, Respondent signed a Stipulation and Settlement Agreement in which Respondent represented to the Commission that Respondent

> has implemented a new training policy and is stipulating to the fact that [it] *has provided training on the applicable PUC rules and regulations concerning luxury limousine service* and that [it] *will strictly enforce these rules and regulations*.

Decision No. R13-0030 (Hearing Exhibit No. 3) at ¶ 45 (*quoting* Decision No. R12-0636 at Attachment 1 at 3 (emphasis supplied)). As pertinent here, this statement is Respondent's admission that it knew and understood the applicable Rules.

262. Decision No. R12-1482 (Hearing Exhibit No. 4), which Respondent received, contains a detailed discussion of luxury limousine service. In addition, that Decision orders Respondent (HummersofVail and its trade names) "immediately [to] cease and desist from advertising, or in any way offering to the public, any transportation service that is not luxury limousine service authorized by" Permit No. LL-01417. Decision No. R12-1482 at Ordering Paragraph No. 3.

263. The Complaint (Hearing Exhibit No. 15), which Respondent received, served as actual notice to Respondent of the preliminary determination that Respondent had violated -- and continued to violate -- the cease and desist order in Decision No. R12-1482 and applicable Rules.

264. There is no evidence that, at any time after January 20, 2013 (the effective date of Decision No. R12-1482), Respondent reviewed the HummersofVail website to determine whether taxi, taxicab, or taxi service (or all of these words and phrases) appeared on the website.

265. There is no evidence that, at any time after January 20, 2013, Respondent took action to remove taxi, taxicab, or taxi service (or all of these words and phrases) from the HummersofVail website. Respondent is not authorized to provide taxicab service.

266. The evidence establishes that the HummersofVail website, for a period of time in 2015, advertised limousine service, which Respondent is not authorized to provide.

267. There is no evidence that, at any time after January 20, 2013, Respondent reviewed the ECOLimoOfVail website to determine whether taxi, taxicab, or taxi service (or all of these words and phrases) appeared on the website.

268. There is no evidence that, at any time after January 20, 2013, Respondent took action to remove taxi, taxicab, or taxi service (or all of these words and phrases) from the ECOLimoOfVail website. Respondent is not authorized to provide taxicab service.

269. The evidence establishes that the ECOLimoOfVail website, for a period of time in 2015 through at least the October 14,2015 evidentiary hearing, advertised limousine service, which Respondent is not authorized to provide.

270. There is no evidence that, at any time between January 20, 2013 and April 27, 2015, Respondent reviewed the VailTaxiService website to determine whether taxi, taxicab, or taxi service (or all of these words and phrases) appeared on the website.

271. There is no evidence that, at any time between January 20, 2013 and April 27, 2015, Respondent took action to remove taxi, taxicab, or taxi service (or all of these words and phrases) from the VailTaxiService website. Respondent is not authorized to provide taxicab service.

272. The evidence establishes that the VailTaxiService website, from November 25, 2013 through at least February 11, 2015, advertised shuttle service, which Respondent is not authorized to provide.

273. The evidence establishes that Respondent continuously, knowingly, and willfully violated the cease and desist order in Decision No. R12-1482 from its January 20, 2013 effective date through at least the October 14, 2015 evidentiary hearing.

274. The evidence establishes that Respondent continuously, knowingly, and willfully violated Rule 4 CCR 723-6-6016(c) for the period that began not later than July 1, 2014 and continued through at least the October 14, 2015 evidentiary hearing.

275. The evidence establishes that Respondent continuously, knowingly, and willfully violated Rule 4 CCR 723-6-6016(g) for a period that began not later than July 1, 2014 and continued through at least the October 14, 2015 evidentiary hearing.

276. The evidence establishes that Respondent continuously, knowingly, and willfully violated Rule 4 CCR 723-6-6010(b) for a period that began on February 14, 2015 and continued through October 9, 2015.

277. *Second*, it is important to public safety and serves the public interest to maintain the distinctions between the various types of motor carrier transportation service and to ensure that a motor carrier offers to provide only the transportation service it is authorized to provide. *See*, *e.g.*, *McKay*, 104 Colo. 402, 410-13, 91 P.2d 965, 969-71 (discussion of public interest served by regulation of motor vehicle carriers); Decision No. R12-1482 at ¶¶ 57-58 (discussion of difference between taxicab service and luxury limousine service). In addition, it is important to other motor carriers to maintain the distinctions between types of transportation service. Decision No. R12-1482 at ¶ 59 (unauthorized transportation service causes financial and other harm to motor carriers authorized to provide service).

278. By the language used on its websites, Respondent intentionally blurred the distinctions between types of transportation service. Respondent was well aware of the distinctions, was well aware that it is authorized to provide only luxury limousine service, and was well aware of its obligation to offer to provide luxury limousine service within the scope of the statute and applicable Rules. Respondent chose to disregard its legal responsibilities and obligations and the restrictions placed on it by the cease and desist order in Decision No. R12-1482 and applicable Rules.

279. *Third*, there is no evidence that Respondent did not know and understand the terms of the cease and decision order in Decision No. R12-1482. There was no evidence that Respondent was unaware that it had violated, and continued through the hearing to violate, that cease and desist order.

280. At no time did Respondent witness Levine -- who is Respondent's owner -- testify that Respondent will comply with, or intends to comply with, the cease and desist order in Decision No. R12-1482 in the future. Thus, there is no evidence on this point.

281. At no time did Respondent witness Levine -- who is Respondent's owner -- testify that Respondent will comply with, or intends to comply with, applicable Rules in the future. Thus, there is no evidence on this point.

282. Respondent did not acknowledge its responsibility to stay current with, and to comply with, the statute and applicable Rules.

283. Respondent did not acknowledge, and did not take responsibility for, its violations of Decision No. R12-1482 and applicable Rules. In fact, in its SOP, Respondent places responsibility for Respondent's violations squarely on the Commission.

284. *Fourth*, § 40-10.1-112(1), C.R.S., provides that the Commission "may issue an order to cease and desist or may suspend, revoke, alter, or amend any ... permit[.]" For the following reasons, the ALJ considered, but did not impose, a sanction other than revocation.

285. Given Respondent's history and based on the evidentiary record in this Proceeding, the issuance of yet another cease and desist order is not a viable option. If a cease and desist order were to issue in this Proceeding, there is little reason to believe that Respondent would pay any more attention to that order than Respondent has paid to previous cease and desist orders and other Commission orders.

286. The alteration or amendment of Permit No. LL-01417 is not a viable option. Given the nature of a luxury limousine permit, it is impractical to alter or to amend Permit No. LL-01417. In addition, there is no evidence to support either an alteration or an amendment because: (a) no hearing exhibit addresses sanctions; (b) Staff witness Schlitter did not testify

about how the Commission might alter or amend Permit No. LL-01417 in response to (*e.g.*, to correct) Respondent's continuing violations; and (c) Respondent witness Levine did not testify about the effect that imposing such a sanction on Respondent would have. Finally, given Respondent's history, the ALJ considers it unlikely that Respondent would comply with an amended or altered Permit No. LL-01417.

287. Suspension of Permit No. LL-01417 is not a viable option. Given Respondent's history and based on the evidentiary record in this Proceeding, the ALJ considers it unlikely that Respondent would suspend operations. In addition, suspension of Permit No. LL-01417 would not preclude persons associated with Respondent (*e.g.*, Respondent's principals, officers, directors, and members) from obtaining another luxury limousine permit and operating under that permit during the period of the suspension of Permit No. LL-01417.

288. *Fifth and lastly*, the ALJ finds unpersuasive Respondent's arguments that the Commission should not revoke Permit No. LL-01417.

289. As a general matter, the ALJ observes that Respondent's reliance on Rule 4 CCR 723-1-1302(b) is misplaced. By its terms, the Rule sets out the factors that the Commission considers pertinent to the imposition of civil penalties. Civil penalties are not among the sanctions available pursuant to § 40-10.1-112(1), C.R.S., the statute pursuant to which the Commission issued the Complaint. In this Proceeding, by way of sanctions, the Commission "may issue an order to cease and desist or may suspend, revoke, alter, or amend any ... permit[.]" Section 40-10.1-112(1), C.R.S.

290. The ALJ now turns to Respondent's specific arguments in support of its position that revocation of Permit No. LL-01417 is excessive.

291. Respondent asserts that the Commission "seeks to permanently revoke Respondent's license based upon the content on Respondent's webpages, not any operational violations related to providing luxury limousine service" (Respondent SOP at 9). It states that there is no evidence that Respondent *provided* transportation service in violation of the cease and desist order in Decision No. R12-1482.

292. The absence of evidence that Respondent provided transportation in violation of the cease and desist order is not controlling because the cease and desist order places two separate and distinct obligations on Respondent:

> Hummers of Vail and ECO Limo of Vail, Vail Taxi Service, Vail Luxury Limo, and Vans to Vail Valley (the entities through which Hummers of Vail conducts its transportation business pursuant to Permit LL-01417), their officers, their executives, their drivers, their agents, and their contractors: (a) **immediately shall cease and desist from providing** any transportation service that is not luxury limousine service authorized by Permit LL-01417; and (b) **immediately shall cease and desist from advertising, or in any way offering to the public**, any transportation service that is not luxury limousine service authorized by Permit LL-01417. As used here, advertising has the same meaning as that found in Rule 4 *Code of Colorado Regulations* 723-6-6001(a): "advise, announce, give notice of, publish, or call attention to by use of any oral, written, or graphic statement made in a newspaper or other publication, on radio, television, or any electronic medium, or contained in any notice, handbill, sign (including signage on a vehicle), flyer, catalog, or letter, or printed on or contained in any tag or label attached to or accompanying any article of personal property.

Decision No. R12-1482 (Hearing Exhibit No. 4) at Ordering Paragraph No. 3 (bolding supplied). This Proceeding focuses on Respondent's advertising or offering to the public transportation services other than luxury limousine service.

293. In addition, the absence of evidence that Respondent provided transportation in violation of the cease and desist order does not address, and does not reduce impact of, the overwhelming evidence that establishes that Respondent violated cease and desist by failing

immediately to cease advertising or otherwise offering to the public any transportation service other than luxury limousine service.

294. Respondent asserts that "any use of the term 'taxi' was not, in itself, violative of the cease and desist order" (Respondent SOP at 2). As explained and discussed above, Respondent's assertion is at odds with the explicit terms of the cease and desist order. In point of fact, the use of the term taxi *is*, in and of itself, a violation of the cease and desist order.

295. With respect to the use of taxi on Respondent's (both HummersofVail and its trade names) webpages, Respondent states: "[A]ny use of the term 'taxi' was done in a generic sense, as Respondent clearly did not provide anything besides luxury limousine service." Respondent's SOP at 6.

296. The ALJ finds no evidentiary support for the statement that "Respondent clearly did not provide anything besides luxury limousine service" as no witness testified about and no document addressed this point.

297. The ALJ finds no evidentiary support for the statement that "any use of the term 'taxi' was done in a generic sense" as no witness testified about and no document addressed this point. Respondent witness Levine opined that "local taxi service is something different from taxi" and that there is confusion with respect to this issue (Tr. at 89:6-10). The following exchange then occurred:

| | |
|---|---|
| [Respondent's counsel:] | *Did you believe*, "taxi," was a generic term? |
| [Respondent witness Levine:] | I believe *the industry believes*, "taxi," Uber, Lyft, limo, shuttle, are all terms of point-to-point transportation. |

Tr. at 89:19-23 (emphasis supplied). Although asked the direct question about *Respondent's* belief about taxi being a generic term, Respondent witness Levine -- who is Respondent's owner

-- did not answer the question. Thus, there is no evidentiary foundation for the statement that "any use of the term 'taxi' was done in a generic sense" (Respondent SOP at 6).[17]

298. Respondent asserts that Staff did not establish or demonstrate that Respondent's actions pose any significant threat to public safety. Respondent SOP at 10-13. "At most, Respondent's alleged violation [of the cease and desist order] is technical in nature, and not operational such that the public is seriously threatened." Respondent SOP at 12. Relatedly, Respondent asserts that, "as demonstrated by the [Commission's] decision to wait a year, the nature of any alleged violations [of the cease and desist order] caused by Respondent's website cannot be considered grave or serious" (Respondent SOP at 14).

299. This argument is not persuasive because establishing a significant threat to public safety is not an element of Staff's proof pursuant to § 40-10.1-112(1)(c), C.R.S. In addition, the argument is not persuasive because it disregards Respondent's obligation to comply with the cease and desist order in Decision No. R12-1482. Further, the argument is not persuasive because it ignores this fact: the Commission deemed Respondent's advertising and offering the public any transportation service that Respondent is not authorized to provide to be serious and important enough to warrant issuance of the cease and desist order in Decision No. R12-1482. Finally, the argument is not persuasive because compliance with Commission cease and desist orders and Commission Rules -- in and of itself -- is important to public safety.

300. Respondent asserts that it "is in compliance with all applicable regulations" (Respondent SOP at 13), which demonstrates that "Respondent is capable of coming in line with applicable regulations without the need of resorting to draconian measures such as permanent

[17] In addition and for the reasons discussed above, there is no foundation for the assertion that *Respondent* is or was confused about the differences between the different types of motor vehicle transportation (Respondent SOP at 10-13).

revocation" (*id*. at 10). As demonstrated and discussed above, this assertion is factually inaccurate. The evidence unequivocally establishes that Respondent is *not* in compliance with all applicable Rules.

301. Respondent asserts that it "has worked in good faith to come into compliance with all applicable regulations and prevent future similar violations" (Respondent SOP at 14). As demonstrated and discussed above, this assertion is factually inaccurate. The evidence unequivocally establishes that Respondent is *not* in compliance with all applicable Rules. This assertion also is contradicted by the evidence of Respondent's continuous, willful, and knowing violation of the cease and desist order in Decision No. R12-1482 and applicable Rules.

302. In addition, the ALJ finds this assertion to be unpersuasive. In 2012, Respondent signed a Stipulation and Settlement Agreement in which Respondent represented to the Commission that Respondent

> ha[d] provided training on the applicable PUC rules and regulations concerning luxury limousine service and that [it would] *strictly enforce these rules and regulations*.

Decision No. R13-0030 (Hearing Exhibit No. 3) at ¶ 45 (*quoting* Decision No. R12-0636 at Attachment 1 at 3 (emphasis supplied)). Respondent failed to abide by the 2012 Stipulation and Settlement Agreement. In this Proceeding, Respondent asserts that it has come into compliance and taken action to prevent future violations. Given its history, the ALJ finds no reason to believe this self-serving assertion, particularly given the dearth of evidentiary support.

303. Respondent states that it

> *ceased operating* under the "Vail Taxi Service" trade name *several month before the hearing, in order to reduce the confusion* that accompanied the

> [Commission's] approval and acceptance of the trade name, and then determination that its name, by itself, constituted advertising.

Respondent SOP at 14 (emphasis supplied). This statement is contrary to the unrebutted testimony of Respondent witness Levine that Respondent operated under the trade name VailTaxiService until October 9, 2015, which was five days before the evidentiary hearing in this Proceeding. In addition, this assertion is not persuasive because removing taxi from Respondent's trade name VailTaxiService was required by Rule 4 CCR 723-6-6010(b). Finally, there has been no determination that use of the trade name VailTaxiService constituted advertising. As discussed above, the language used on Respondent's websites -- and not the trade name VailTaxiService -- constituted advertising.

304. Respondent asserts that it has retained compliance counsel (Respondent SOP at 2). This is not persuasive. There is no evidence with respect to: (a) the meaning of the phrase compliance counsel as used by Respondent; (b) the identity of the retained compliance counsel; (c) what the compliance counsel will do; and (d) the nature and duration of the relationship between Respondent and compliance counsel (*e.g.*, is there a contract and, if so, of what duration? is the relationship at will? is the relationship *ad hoc*?). Importantly, there is no evidence that Respondent will abide by and will implement compliance counsel's advice. This is of concern given the number of times that Staff has counseled Respondent and Respondent's demonstrated unwillingness to follow advice concerning its operations.

305. Respondent asserts that its "retaining of counsel in this proceeding demonstrates Respondent's attention to [Commission] procedures and regulations, as well as [Respondent's] commitment to adherence and compliance to [Commission] regulations." Respondent SOP at 14.

306. The ALJ finds this assertion to be unpersuasive because, as shown by the following discussion: (a) Respondent did not retain legal counsel in this Proceeding voluntarily; and (b) Respondent's actions in this Proceeding demonstrate Respondent's continued adherence to its past practice of first ignoring Decisions and then waiting until the last moment to comply.

307. On March 2, 2015, by Decision No. R15-0198-I, the ALJ ordered Respondent (referred to in that Interim Decision as Hummers) to obtain legal counsel in this Proceeding. Respondent's counsel was to enter an appearance not later than March 11, 2015. That Interim Decision included these advisements:

> **Hummers is advised and is on notice that it will not be permitted to participate in this Proceeding without an attorney.**
>
> **Hummers is advised and is on notice that** this case will proceed without Hummers's participation if Hummer is not represented by an attorney and if Hummers's attorney does not enter an appearance in accordance with this Interim Decision.

Decision No. R15-0198-I at ¶¶ 16-17 (bolding in in original). *See also id*. at Ordering Paragraph No. 3 (same). Respondent neither sought additional time within which to comply nor complied with that Interim Decision, which was served on Respondent on March 2, 2015.

308. Due to Respondent's failure to comply, on March 13, 2015, by Decision No. R15-0240-I, the ALJ ordered that Respondent (referred to in that Interim Decision as Hummers) was prohibited from participating in this Proceeding without legal counsel. That Interim Decision stated: "**Hummers is advised and is on notice that** if Hummers's counsel enters an appearance in this Proceeding and if that counsel makes an appropriate motion, the ALJ will reconsider" her ruling. Decision No. R15-0240-I at ¶ 14 (bolding in original). That Interim Decision was served on Respondent on March 13, 2015.

309. On March 27, 2015, by Decision No. R15-0291-I, the ALJ scheduled the evidentiary hearing in this matter for May 13, 2015. That Interim Decision included these advisements to Respondent (referred to as Hummers):

> **Hummers is advised and is on notice that**, in accordance with Decision No. R15-0240-I, it may not participate in the evidentiary hearing and may not make filings in this Proceeding.
>
> **Hummers is advised and is on notice that**, in accordance with Decision No. R15-0240-I, if Hummers's counsel enters an appearance in this Proceeding and files an appropriate motion, the ALJ will reconsider the ruling in Decision No. R15-0240-I.

Decision No R15-0291-I at ¶¶ 13-14 (bolding in original; footnote omitted). *See also id*. at Ordering Paragraph No. 2 ("The Parties are held to the advisements contained in the Interim Decisions issued in this Proceeding."). That Interim Decision was served on Respondent on March 27, 2015.

310. Respondent made no filing in this Proceeding between March 27, 2015 and May 7, 2015.

311. On May 7, 2015, Respondent filed: (a) Unopposed Motion for Reconsideration of Decision and Acceptance of Entry of Appearance; and (b) Entry of Appearance of its counsel. On May 14, 2015, by Decision No. R15-0465-I, the ALJ *inter alia* granted this motion.

312. May 7, 2015 was: (a) four business days and six calendar days before the scheduled May 13, 2015 hearing date; (b) 66 days after Respondent was ordered to obtain legal counsel; (c) 55 days after Respondent was informed that it could not participate in this Proceeding without counsel; and (d) 42 days after the issuance and service of Decision No. R15-0291-I, which scheduled the May 13, 2015 hearing.

313. Respondent asserts that the "inherent confusion that accompanied the [Commission's] actions in allowing Respondent to operate under its trade name, even after a

formal hearing focused on advertising, severely diminish[es] Respondent's culpability and any bad-faith that might be attributed to Respondent's actions" (Respondent SOP at 14). The ALJ finds this assertion unpersuasive.

314. First, for the reasons discussed in detail above, the ALJ finds both unpersuasive and totally lacking credibility any assertion based on Respondent's confusion.

315. Second, that the Commission allowed Respondent to operate under the trade name VailTaxiService is neither relevant nor persuasive. Respondent violated the cease and desist order in Decision No. R12-1482 by violating the prohibition against "advertising, or in any way offering to the public, any transportation service that is not luxury limousine service authorized by Permit No. LL-01417" (*id*. at Ordering Paragraph No. 3). The *content* of Respondent's websites violated the cease and desist order.

316. Third, promulgation of Rule 4 CCR 723-6-6010(b) on February 14, 2014 was a change of law that prohibited Respondent from including taxi in the trade name VailTaxiService after February 14, 2015. This is a Rule violation, separate and apart from the cease and desist order violation. Respondent's attempt to conflate the two violations is unavailing.

317. Respondent asserts that it "is a small-business owner that provides a valuable service to the Vail Valley" (Respondent SOP at 15). Respondent also asserts that "permanent revocation would by definition destroy Respondent's ability to continue business, thereby depriving a community that depends on carriers such as Respondent as a valuable transportation resource" (*id*.).

318. There is no record evidence to support these statement: (a) Respondent is a small business; (b) Respondent provides a valuable service; and (c) the community depends on carriers

such as Respondent. Respondent had an opportunity to provide evidence at the hearing on these points but elected not to do so.

319. To support these and other factual statements that find no support in the evidentiary record, Respondent asks that the Commission take administrative notice of its own files. In doing so, Respondent cites and relies on Rule 4 CCR 723-1-1501(c). Respondent SOP at 15 and note 3.

320. Rule 4 CCR 723-1-1501(c) provides, in relevant part:

> The Commission may take administrative notice of ... documents in its files[.] Any person requesting administrative notice *shall specify on the record* every fact to be noticed. In addition, unless already filed with the Commission, the person requesting administrative notice *shall provide a complete copy of the document that contains any fact to be noticed as an exhibit in the proceeding*. ... *Every party shall have the opportunity on the record and by evidence[] to controvert evidence admitted by administrative notice*.

(Emphasis supplied.)

321. The ALJ will not take administrative notice of the Commission documents because: (a) Respondent did not comply with the Rule requirement as Respondent did not specify on the evidentiary record the facts to be noticed; (b) Respondent did not comply with the Rule requirement as Respondent did not provide as a hearing exhibit a copy of each document that contains the facts to be noticed; and (c) taking administrative notice would require reopening the evidentiary record to receive the facts admitted by administrative notice and to allow Staff the opportunity to rebut those facts. *See*, *e.g.*, *Colorado Energy Advocacy Office v. Public Service Company of Colorado*, 704 P.2d 298 (Colo. 1985) (parties must be given opportunity to rebut evidence relied on by the Commission where that evidence was not presented at hearing).

322. Respondent asserts that the evidence does not support Staff's "claims that [Respondent] is a habitual rule-breaker" (Respondent SOP at 15). This argument is not relevant

because establishing that Respondent is a "habitual rule-breaker" is not an element of Staff's proof pursuant to § 40-10.1-112(1)(c), C.R.S. In addition, and more importantly, this argument is not persuasive as the evidence establishes unequivocally Respondent's past, continuing, and current behavior as a persistent, knowing, and willful -- that is, habitual -- rule-breaker.

323. During the evidentiary hearing, Respondent's counsel intimated that the definition of advertising found in Decision No. R12-1482 at Ordering Paragraph No. 3 is too broad and, perhaps, not understandable. Respondent did not raise this argument in its SOP. Thus, it appears that Respondent has abandoned this argument. Nonetheless, out of an abundance of caution, the ALJ notes the following: (a) Decision No. R12-1482 at Ordering Paragraph No. 3 used the definition of advertising found in Rule 4 CCR 723-6-6001(a), which implements and is virtually identical to § 40-10.1-101(1), C.R.S.; and (b) challenging the definition of advertising as used in Decision No. R12-1482 is a prohibited collateral attack on Decision No. R12-1482, which became a final Commission Decision on January 20, 2013 and, thus, is conclusive pursuant to § 40-6-112(2), C.R.S.; and (c) Respondent had the opportunity to take exceptions to Decision No. R12-1482 if Respondent considered the definition of advertising to be too broad or not understandable, but Respondent elected not to file exceptions.

324. Finally, the ALJ notes that, from the date it received Permit No. LL-01417 in 2008, Respondent has had actual knowledge that it must keep abreast of -- and must comply with -- the applicable statutes and Rules governing luxury limousine service as they may change over time. In addition, from the issuance of Decision No. R12-1482 in 2012, Respondent has had actual knowledge that it must comply with the cease and desist order in that Decision. Respondent's obligations are not affected by whether the Commission or its Staff provided

information to Respondent or reminded Respondent of its obligations. This is a complete answer to Respondent's claim that revocation is not an appropriate sanction because the Commission

> delay[ed] filing this proceeding for over a year. Indeed, the [Commission] neglected to even reach out to Respondent by a simple phone call in an attempt to rectify the alleged harm.

Respondent SOP at 10. Respondent's attempt to blame the Commission for Respondent's continuous, knowing, willful, and blatant violations lacks factual foundation; seeks to obfuscate (if not to obliterate) Respondent's responsibility for its own decisions; and is unpersuasive.

325. For all these reasons, and based on the evidence in this Proceeding, the ALJ finds that the appropriate sanction in this Proceeding is permanent revocation of Permit No. LL-01417 for cause.

**b. Ineligibility to Obtain New Luxury Limousine permit.**

326. Revocation of Permit No. LL-01417 for cause raises these issues: (a) whether the revocation renders Respondent and associated individuals ineligible to obtain a new permit; and (b) if it does, the period of the ineligibility. This, in turn, rests on a determination of the statute that applies in this case. The ALJ now turns to this issue.

327. Sections 40-10.1-112(4) and 40-10.1-302(3), C.R.S., address the circumstances under which, and for how long, one is ineligible to obtain a new permit issued in part 3 of article 10.1 of title 40, C.R.S., following revocation of a similar permit for cause.

328. In pertinent part, § 40-10.1-112, C.R.S., provides:

> (1) Except as specified in [§ 40-10.1-112(3), C.R.S.], the commission, at any time, by order duly entered, after hearing upon notice to the motor carrier and upon proof of violation, may issue an order to cease and desist or *may ... revoke ... any ... permit issued to the motor carrier under [article 10.1 of title 40, C.R.S.,]* for the following reasons:
>
> * * *

> (c) A violation or refusal to observe any of the proper orders or rules of the commission[.]
>
> * * *
>
> (4) *A motor carrier whose ... permit has been revoked for cause more than twice is not eligible for another such ... permit for at least two years after the date of the third such revocation*. In the case of an entity, the two-year period of ineligibility also applies to all principals, officers, and directors of the entity, whether or not any such principal, officer, or director applies individually or as a principal, officer, or director of the same or a different entity. As used in [§ 40-10.1-112(4), C.R.S.,] "revoked for cause" does not include a revocation for failure to carry the required insurance unless it is shown that the person knowingly operated without insurance.

(Emphasis supplied.) This provision became effective on August 10, 2011.

329. In pertinent part, § 40-10.1-302, C.R.S., provides:

> (1)(a) A person shall not operate or offer to operate a ... luxury limousine ... in intrastate commerce without first having obtained a permit therefor from the commission in accordance with part 3 [of article 10.1 of title 40, C.R.S.].
>
> (b) A person may apply for a permit under this part 3 to the commission in such form and with such information as the commission may require.
>
> * * *
>
> (3) *A person whose permit has been revoked for cause is not eligible for another permit for two years after the date of revocation*. If an entity's permit has been revoked, the two-year ineligibility also applies to the entity's principals, officers, directors, and members of the entity, except for a revocation for failure to carry insurance unless the person knowingly operated a motor carrier without insurance.

(Emphasis supplied.) This provision became effective on June 5, 2013.

330. Under § 40-10.1-112(4), C.R.S., ineligibility occurs when this condition precedent is met: the motor carrier must have a minimum of *two prior revocations for cause of a similar permit*. If § 40-10.1-112(4), C.R.S., applies in this Proceeding, Respondent may obtain another luxury limousine permit immediately following the date of revocation of Permit No. LL-01417

because Respondent has not had at least two prior revocations for cause of luxury limousine permits.

331. Under § 40-10.1-302(3), C.R.S., ineligibility occurs when this condition precedent is met: the motor carrier's permit is revoked for cause. If § 40-10.1-302(3), C.R.S., applies in this Proceeding, Respondent (and associated individuals) cannot obtain another luxury limousine permit for a period of two years from the date of revocation of Permit No. LL-01417.

332. As can be seen and as pertinent here, these statutes address the same subject matter (*i.e.*, the circumstances under which a motor carrier becomes ineligible to obtain a luxury limousine permit following revocation for cause of a luxury limousine permit) but have significantly different conditions precedent for ineligibility. If possible, these statutory provisions must be reconciled to give effect to the provisions of both statutes.

333. Section 40-10-112(4), C.R.S., allows at least two revocations to occur before it mandates ineligibility. Section 40-10.1-302(3), C.R.S., mandates ineligibility as a consequence of revocation for cause, even in the first instance of revocation. The ALJ cannot reconcile §§ 40-10.1-112(4) and 40-10.1-302(3), C.R.S., on the issue of the condition precedent to Respondent's ineligibility to obtain another luxury limousine permit following the revocation for cause of Permit No. LL-01417.

334. As the two statutes are irreconcilable, the ALJ must determine which statute to apply. To do so, the ALJ looks to the rules of statutory construction.

335. Section 2-4-205, C.R.S., addresses the situation in which two statutory provisions are irreconcilable:

> If a general [statutory] provision conflicts with a specific or local [statutory] provision, it shall be construed, if possible, so that effect is given to both. *If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision*, unless the general provision is the later adoption and the manifest intent is that the general provision prevail.

(Emphasis supplied.)

336. Section 2-4-206, C.R.S., also speaks to treatment of irreconcilable statutes:

> *If statutes enacted at the same or different sessions of the general assembly are irreconcilable, the statute prevails which is latest in its effective date*. If the irreconcilable statutes have the same effective date, the statute prevails which is latest in its date of passage.

(Emphasis supplied.)

337. Applying these rules of statutory construction, § 40-10.1-302(3), C.R.S., governs the issue of ineligibility.

338. First, § 40-10.1-302(3), C.R.S., is a special provision that applies only to permits issued pursuant to part 3 of article 10.1 of title 40, C.R.S., while § 40-10.1-112(4), C.R.S., is a general provision that applies to all types of authorities issued pursuant to article 10.1 of title 40, C.R.S. Pursuant to § 2-4-205, C.R.S., § 40-10.1-302(3), C.R.S., prevails.

339. Second, the June 5, 2013 effective date of § 40-10.1-302(3), C.R.S., is later than the August 10, 2011 effective date of § 40-10.1-112(4), C.R.S. Pursuant to § 2-4-206, C.R.S., § 40-10.1-302(3), C.R.S., prevails.

340. The language of § 40-10.1-302(3), C.R.S., is mandatory: "A person whose permit has been revoked for cause *is not eligible* for another permit for two years after the date of

revocation." In addition, if an entity holds the revoked permit, the mandatory ineligibility applies to individuals who are principals, officers, directors, and members of the entity.

341. Thus, pursuant to § 40-10.1-302(3), C.R.S., the ALJ finds that Respondent (HummersofVail and its trade names), Respondent's principals, Respondent's officers, Respondent's directors, and Respondent's members are each ineligible to obtain a luxury limousine permit for a period of two years from the date of revocation for cause of Permit No. LL-01417. As used here, the date of revocation is the date of the final Commission Decision that revokes Permit No. LL-01417 for cause.

**c. Compliance Filing.**

342. The record does not contain the name, address, and telephone number of each of Respondent's principals, officers, directors, and members. The Commission must have this information in order to ensure that none of Respondent's principals, officers, directors, and members obtains a luxury limousine permit during the two years that they are ineligible to obtain such a permit.

343. Respondent has, or should have, in its possession the name, address, and telephone number of each of Respondent's principals, officers, directors, and members.

344. The ALJ will order Respondent to make the following compliance filing: not later than the date of revocation of Permit No. LL-01417, Respondent will file a list of its principals, its officers, its directors, and its members. As used here, the date of revocation is the date of the final Commission Decision that revokes Permit No. LL-01417 for cause.

## IV. CONCLUSIONS

345. Respondent violated the cease and desist order contained in Decision No. R12-1482.

346. Respondent's violation of the cease and desist order contained in Decision No. R12-1482 was knowing and willful.

347. Respondent's knowing and willful violation of the cease and desist order contained in Decision No. R12-1482 was continuous from January 20, 2013 through at least October 14, 2015.

348. Respondent violated Rule 4 CCR 723-6-6016(c) for the period that began not later than July 1, 2014 and continued through at least the October 14, 2015 evidentiary hearing.

349. Respondent violated Rule 4 CCR 723-6-6016(g) for a period that began not later than July 1, 2014 and continued through at least the October 14, 2015 evidentiary hearing.

350. Respondent violated Rule 4 CCR 723-6-6010(b) for a period that began on February 14, 2015 and ended on October 9, 2015.

351. Respondent should be sanctioned for its violation of the cease and desist order contained in Decision No. R12-1482 and the cited Commission Rules.

352. The appropriate sanction for Respondent's violations is permanent revocation for cause of Permit No. LL-01417.

353. As a result of the permanent revocation for cause, and pursuant to § 40-10.1-302(3), C.R.S., Respondent (HummersofVail and its trade names), Respondent's principals, Respondent's officers, Respondent's directors, and Respondent's members are each ineligible to obtain another luxury limousine permit for a period of two years from the date of revocation. As used here, the date of revocation is the date of the final Commission Decision that revokes Permit No. LL-01417 for cause.

354. Respondent must file, not later than the date of revocation and in this Proceeding, the name, address, and telephone number of each of its principals, officers, directors, and members. As used here, the date of revocation is the date of the final Commission Decision that revokes Permit No. LL-01417 for cause.

355. Pursuant to § 40-6-109(2), C.R.S., the Administrative Law Judge recommends that the Commission enter the following order.

## V. ORDER

### A. The Commission Orders That:

1. Consistent with the discussion above, Permit No. LL-01417 is permanently revoked.

2. Consistent with the discussion above, HummersofVail Inc., doing business as VailTaxiService and/or ECOLimoOfVail and/or VailLuxuryLimo and/or VansToVailValley (HummersofVail), is ineligible to obtain a luxury limousine permit for a period of two years from the date of revocation. As used here, the date of revocation is the date of the final Commission Decision that revokes Permit No. LL-01417 for cause.

3. Consistent with the discussion above, each principal, officer, director, and member of HummersofVail is ineligible to obtain a luxury limousine permit for a period of two years from the date of revocation. As used here, the date of revocation is the date of the final Commission Decision that revokes Permit No. LL-01417 for cause.

4. Consistent with the discussion above, not later than the date of revocation, HummersofVail shall file, in this Proceeding, the name, address, and telephone number of each principal, officer, director, and member of HummersofVail. As used here, the date of revocation is the date of the final Commission Decision that revokes Permit No. LL-01417 for cause.

5. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

6. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

7. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge

ATTEST: A TRUE COPY

Doug Dean,
Director